

*These notes relate to the Lords amendments to the Public Service Pensions Bill, as brought from the House of Lords on 27th February 2013 [Bill 142]*

## **PUBLIC SERVICE PENSIONS BILL**

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### **EXPLANATORY NOTES ON LORDS AMENDMENTS**

#### **INTRODUCTION**

1. These Explanatory Notes relate to the Lords amendments to the Public Service Pensions Bill, as brought from the House of Lords on 27 February 2013. They have been prepared by the Treasury in order to assist the reader of the Bill and the Lords amendments and to help inform debate on the Lords amendments. They do not form part of the Bill and have not been endorsed by Parliament.
2. These Notes, like the Lords amendments themselves, refer to HL Bill 67, the Bill as first printed for the Lords.
3. These Notes need to be read in conjunction with the Lords amendments and the text of the Bill. They are not, and are not meant to be, a comprehensive description of the effect of the Lords amendments.
4. All the Lords amendments were in the name of the Minister except for Lords Amendments 78 and 79, which were opposed by the Government. In the following Commentary, an asterisk appears in the heading to the paragraph dealing with Lords Amendments 78 and 79.

#### **COMMENTARY ON LORDS AMENDMENTS**

***Lords Amendments 1 to 8, 13, 17, 20 and 21, 23 to 27, 30, 35, 40 to 44, 49 to 51, 53 to 60, 64 and 65, 67, 70, 72 and 73, 75 to 77, 80, 83 to 88, 92 to 95, 97 to 102, 104, 106 to 110, 112, 120 to 122, 124, 125 and 128***

5. Following the decisions of the Northern Ireland Executive and the Scottish Government not to bring forward Legislative Consent Motions relating to the Bill, these Lords amendments would collectively amend the Bill so that it no longer applies to matters within the legislative competence of the Northern Ireland Assembly or the Scottish Parliament. The National Assembly for Wales passed a Legislative Consent Motion in respect of the Bill on 29 January 2013, and so the Bill will continue to apply to matters within the Assembly's legislative competence.

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6. In Scotland, the amendments relate to the pensions of certain members of the Scottish judiciary and the pension schemes of public bodies and offices for which the Scottish Parliament has competence (including the pension schemes of Scottish Ministers). In Northern Ireland, the amendments also relate to pension schemes for Northern Ireland civil servants; the devolved Northern Ireland judiciary; local government workers; teachers; health service workers; fire and rescue workers; police; and public bodies for which the Northern Ireland Assembly has legislative competence.

***Lords Amendments 9, 10 and 12***

7. These amendments would implement the recommendations of the Delegated Powers and Regulatory Reform Committee.

8. The combined effect of Lords Amendments 10 and 12 would be to restrict the scope of powers for scheme regulations to amend primary legislation, such that any changes could only be for consequential purposes and, in the case of primary legislation, to Acts that have already been made.

9. Lords Amendment 9 would enable scheme regulations to make provisions which are consequential, supplementary, incidental or transitional in relation to provisions in this Bill, as well as in relation to schemes.

***Lords Amendments 11, 32, 33, 37 and 38***

10. These amendments would change the way in which scheme regulations under the Bill can make retrospective provision. Lords Amendment 37 would alter the procedure for making retrospective provisions in scheme regulations which have a significant adverse effect on members.

11. Where the retrospective provisions appear to the responsible authority to have significant adverse effects in relation to the pension payable to or in respect of members of the scheme, the authority would first have to obtain the consent of the persons (or representatives of the persons) who appear to the responsible authority to be likely to be affected by the provision if it were made.

12. Where the retrospective provisions appear to the responsible authority to have significant adverse effects in any way not covered by subsection (1) in relation to the members of the scheme, subsection (2) would provide that the authority must first consult the same persons as above with a view to reaching agreement.

13. Lords Amendments 32 and 33 would restrict the consultation and report requirements in clause 20 from applying in the case where scheme regulations contain retrospective provisions which have a significant adverse effect on members. Such circumstances would instead be covered by the new clause inserted by Lords Amendment 37.

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14. Lords Amendment 38 would add the powers to make certain retrospective provisions (see Lords Amendment 37) to the list of scheme regulations that are subject to the affirmative procedure.

***Lords Amendments 14 to 16***

15. Lords Amendment 14 would clarify that there will be more than one pension board in the locally administered schemes that have more than one scheme manager.

16. Lords Amendments 15 and 16 would require equal numbers of employer and member representatives to be appointed to each pension board in the public service pension schemes.

***Lords Amendments 18, 66, 68 and 69***

17. Lords Amendment 18 would insert a new clause requiring a scheme advisory board to be established in each pension scheme made under clause 1 of the Bill. The scheme advisory board's role would be to advise the responsible authority, at the authority's request, on the desirability of any change to the scheme.

18. In addition, in the locally administered schemes, where there will be multiple scheme managers and pension boards, the amendment would allow for the scheme advisory board to be given an additional role of advising the scheme managers and pension boards on the effective and efficient administration and management of the scheme, any connected scheme (as defined in clause 4(6)) and any pension fund.

19. The amendment would also require the recipient of the scheme advisory board's advice, be that the responsible authority, a scheme manager or a pension board, to have regard to that advice.

20. Lords Amendment 66 would move the definition of "local authority" to clause 33, while Lords Amendments 68 and 69 would add definitions of "pension board" and "scheme advisory board" to that clause.

***Lords Amendments 19, 63 and 74***

21. Lords Amendment 19 would provide that where a Treasury revaluation order made under clause 8(2) contains a negative figure for the change in prices or earnings, it is subject to the affirmative Commons procedure. That procedure would be defined in clauses 33 and 34 by virtue of Lords Amendments 63 and 74.

***Lords Amendments 22, 52 and 89 to 91***

22. Lords Amendment 22 would introduce a new clause to require scheme managers to provide pension scheme members with regular benefit information statements, containing details of the benefits that they have earned in the pension scheme. Such statements would need to include details of the pension benefits that a person has earned in the scheme and any other information specified in a Treasury direction. Lords Amendment 52 would also require new public body pension schemes to comply with the requirement to provide benefit information statements.

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23. Lords Amendments 89, 90 and 91 would provide for the Pensions Regulator to have a role in overseeing the provision of benefit information statements. Lords Amendment 90 would add benefit information statements to the list of matters on which the Regulator must issue guidance. Lords Amendments 89 and 91 would include the new clause in the areas that the Regulator will oversee and on which it can take enforcement action should schemes fail to comply with their duties.

***Lords Amendments 28 and 29***

24. Lords Amendments 28 and 29 relate to the “closing date” specified for existing pension schemes in clause 16. After the specified closing date no person may accrue further benefits in the existing pension schemes listed in Schedule 5. Lords Amendment 28 would make the closing date for the existing local government scheme in England and Wales 31 March 2014. For all other schemes, the closing date would be 31 March 2015, as a result of Lords Amendment 29.

***Lords Amendments 31, 113, 115 and 116***

25. Lords Amendments 31, 113, 115 and 116 would remove references in clause 18 and Schedule 7 to “closure”, and replace them with references to the subsections in clauses 16 and 28 which restrict the accrual of future benefits under existing schemes.

***Lords Amendments 34, 39, 71, 81 and 82, 96, 105, 123 and 126***

26. These amendments would allow for the implementation of the Government’s announced policy on the future of judicial pensions. Lords Amendment 82 would allow the Lord Chancellor (after consulting the Secretary of State for Scotland, in the case of judges with a jurisdiction exercised exclusively in relation to Scotland) to make regulations creating a separate pension scheme for the judiciary. Lords Amendment 126 would make the Lord Chancellor’s function of making such regulations a protected function within Schedule 7 to the Constitutional Reform Act 2005. Lords Amendment 39 would apply the affirmative procedure to the scheme regulations and any changes to the scheme regulations for the new judicial scheme, apart from in cases where the pension board for that scheme has stated that it considers any changes to be minor or wholly beneficial.

27. Lords Amendments 81 and 82 would also remove provisions that relate to the legislative competence of the Northern Ireland Assembly and the Scottish Parliament.

28. Amendments 96 and 105 would add pension schemes and injury and compensation schemes provided under Schedule 10 to the Rent Act 1977 to the list of existing schemes in Schedule 5 (pensions) and Schedule 6 (injury and compensation schemes) to the Bill, with the result that clauses 16 and 17 would apply in relation to such schemes. Amendment 123 would make a consequential change to the Judicial Pensions and Retirement Act 1993 to ensure that the transition between schemes works as intended.

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***Lords Amendment 36***

29. Lords Amendment 36 would amend the dates for the period of additional protection for certain core elements of the new public service pension schemes in clause 20. It would provide that the protection is to apply to all schemes created under clause 1, including those which are created before 1 April 2015. For all of these schemes the protection would be in place until 31 March 2040.

***Lords Amendments 45 and 46***

30. Lords Amendment 45 would adjust the powers in clause 22 to extend schemes to persons not listed in clause 1(2). It would provide that scheme regulations may include special provisions in respect of persons outside of public service who are admitted into the scheme by exercise of the extension powers in clause 22(2) to (5). The amendment would also allow for the scheme regulations to provide the responsible authority with powers to make a direction administratively modifying the application of the scheme to persons admitted to the scheme under those extension powers in future.

31. The amendment would restrict the use of such a direction to certain objectives set out in the amendment.

32. Lords Amendment 46 would state that where scheme regulations under clause 22(3) provide that a scheme may be extended to a particular group or type of person, the decision to extend access to the scheme to such persons could be delegated to local scheme managers, subject to any conditions imposed by the responsible authority.

***Lords Amendments 47 and 48***

33. Lords Amendment 47 would clarify that the powers in clause 23 apply to both the class of persons described in clause 1(2) for whom a scheme may be made and other persons to whom the scheme has been extended under clause 22.

34. Lords Amendment 48 would make the use of the powers in clause 23 subject to any provisions contained in scheme regulations. This would allow each scheme to limit or modify how the power to make payments outside the scheme for pensions or other benefits may be used.

***Lords Amendments 61 and 62***

35. Lords Amendments 61 and 62 would provide consistency throughout the Bill in the way the Bill cross-refers to Schedule 4 of the Pensions Act 1995. They would ensure that the wording of the cross-references is the same in clauses 31 and 32 as in clause 9.

***\*Lords Amendments 78 and 79***

36. These amendments would add the Defence Fire and Rescue Service and members 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

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and rescue workers” and “members of police forces” respectively. They would enable them to benefit from the pension age provisions in clause 9(2).

***Lords Amendments 103 and 111***

37. Lords Amendment 103 would apply clause 16 to any scheme providing pension benefits which is made under section 48 of the Police and Fire Reform (Scotland) Act 2012, by adding such a scheme to Schedule 5.

38. Lords Amendments 111 would bring an injury and compensation scheme made under that section within the provisions of clause 17, by adding such a scheme to Schedule 6.

***Lords Amendments 114 and 117***

39. Lords Amendments 114 and 117 would enable a distinct definition of pensionable earnings to be set out in scheme regulations for the purposes of the final salary link. They would apply to paragraphs 1 and 2 of Schedule 7. They would also provide for a protection in that the amount of earnings in the new scheme which are to be taken as pensionable earnings for the purposes of the final salary link cannot be materially less than the earnings that would have been the person’s pensionable earnings had service in the new scheme been old scheme service (in a paragraph 1 case) or deemed transfer scheme service (in a paragraph 2 case).

***Lords Amendment 118***

40. Lords Amendment 118 would allow scheme regulations to provide that a pension that is in payment under an existing public service or public body pension scheme cannot be recalculated by reference to Schedule 7 following a subsequent period of public service employment. Sub-paragraph (2) of the new paragraph 5 would allow such provision to be made by amending current scheme rules.

***Lords Amendment 119***

41. Lords Amendment 119, which would insert a new section 8A into the Pensions (Increase) Act 1971, would clarify how the uprating provisions in that Act operate on public service pensions that are either protected by the Bill’s final salary link or are career average schemes to which the restrictions in clause 16(1) or 28(2) apply.

42. Subsection (1) of the new section 8A would provide that references in section 8(2) of the 1971 Act to the service in respect of which a pension is payable include “new scheme service” where the final salary link applies. Subsection (2) of the new section would make equivalent provision in relation to new scheme service for those with service in existing career average schemes. Those who move from an old scheme to a new one will therefore not have their pensions uprated under the provisions of the 1971 Act until they leave the new scheme or, if the scheme so provides, draw pension benefits.

***Lords Amendment 127***

43. Lords Amendment 127 would enable active and deferred members of the Legal Services Commission who transfer into the Principal Civil Service Pension

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Scheme on 1 April 2013 and were within 10 and 13.5 years of their pension age on 1 April 2012 to be eligible for the transitional protection available to other staff in the receiving scheme by virtue of clause 16 (5) and (7).

## **FINANCIAL EFFECTS**

44. The financial effects as set out in the Explanatory Notes to HL Bill 67 (as brought from the Commons) would be affected by Lords Amendments 78 and 79. The estimated fall in net cost of public service pensions would be offset by the increased costs of providing the Defence Fire and Rescue Service and members of the Ministry of Defence Police with pensions in line with those of local authority firefighters and members of police forces.

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