# PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT
GENERAL COMMITTEES

## Public Bill Committee

# PUBLIC SERVICE PENSIONS BILL

*Fifth Sitting*

*Tuesday 13 November 2012*

*(Morning)*

CONTENTS



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**Saturday 17 November 2012**

STRICT ADHERENCE TO THIS ARRANGEMENT WILL GREATLY FACILITATE THE PROMPT PUBLICATION OF THE BOUND VOLUMES OF PROCEEDINGS IN GENERAL COMMITTEES

**The Committee consisted of the following Members:**

*Chairs:* Mr Joe Benton, † Annette Brooke

† Abrahams, Debbie *(Oldham East and Saddleworth)* (Lab)
† Ashworth, Jonathan *(Leicester South)* (Lab)
† Burt, Lorely *(Solihull)* (LD)
† Doyle-Price, Jackie *(Thurrock)* (Con)
† Evans, Graham *(Weaver Vale)* (Con)
† Freer, Mike *(Finchley and Golders Green)* (Con)
† Fuller, Richard *(Bedford)* (Con)
† Gibb, Mr Nick *(Bognor Regis and Littlehampton)* (Con)
† Gilmore, Sheila *(Edinburgh East)* (Lab)
† Hands, Greg *(Chelsea and Fulham)* (Con)
† Jamieson, Cathy *(Kilmarnock and Loudoun)* (Lab/Co-op)
† Javid, Sajid *(Economic Secretary to the Treasury)*
† Jones, Mr Marcus *(Nuneaton)* (Con)
† Leadsom, Andrea *(South Northamptonshire)* (Con)
† Leslie, Chris *(Nottingham East)* (Lab/Co-op)
† McGovern, Alison *(Wirral South)* (Lab)
† McKenzie, Mr Iain *(Inverclyde)* (Lab)
† Paisley, Ian *(North Antrim)* (DUP)
Williams, Stephen *(Bristol West)* (LD)

Kate Emms, Neil Caulfield, *Committee Clerks*

**† attended the Committee**

# Public Bill Committee

*Tuesday 13 November 2012*

*(Morning)*

[Annette Brooke *in the Chair*]

## Public Service Pensions Bill

## Written evidence to be reported to the House

PSP 13 CBI

PSP 14 National Union of Teachers

### Clause 15

Regulatory oversight

8.55 am

*Question proposed,* That the clause stand part of the Bill.

**The Chair:** With this it will be convenient to discuss new clause 3—*Review of standards of administration*—

'(1) Within six months of the day on which this Act is passed, the Treasury shall commission an independent review into the standards of administration in public service pension schemes and how those standards could be improved.

(2) The Treasury shall lay before Parliament the report produced by the review as soon as reasonably practical after the report has been published.'.

**The Economic Secretary to the Treasury (Sajid Javid):** On a point of order, Mrs Brooke. May I seek your advice? Are we not going to consider the new clause first?

**The Chair:** We are going to consider both new clause 3 and clause stand part. The new clause will be discussed as part of this debate.

**Sajid Javid:** Further to that point of order, Mrs Brooke. I am sorry to seek your advice again, but would it not be appropriate—I may be mistaken—for the Opposition spokesman to speak to new clause 3 first?

**The Chair:** If you wish and it is more convenient, you may deal with the new clause in your summing up at the end of this debate.

**Chris Leslie** (Nottingham East) (Lab/Co-op): Further to that point of order, Mrs Brooke. This might be useful to the Committee. The stand part debate and new clause 3 have been grouped together, but I have not yet talked about the virtues of the new clause, so for the purposes of this debate, perhaps—at your discretion—the Minister might outline the general purpose of clause 15 and we could then get into the debate proper.

**The Chair:** That is exactly what I have suggested. If the Minister does not want to comment on new clause 3 now, he will have ample time to do so when he sums up at the end of this debate. However, it is for the Minister to speak to the clause at this point.

**Sajid Javid:** Thank you, Mrs Brooke.

The clause introduces schedule 4, which significantly extends the Pensions Regulator's role in relation to public service pensions schemes. We will discuss schedule 4 in more detail later. The provision reflects Lord Hutton's recommendation that the scrutiny of public service schemes should be independent of interested parties.

For public service pension schemes in Great Britain, the clause will provide a power to enable the Secretary of State for Work and Pensions to make changes that are consequential on schedule 4 by order. That is a standard power that allows for the rectification of unforeseen problems that could otherwise hinder the legislation or prevent it from operating as intended. The clause will also provide a power to make further or connected provisions for the regulation of public service pension schemes in case unforeseen interactions are identified during the detailed design work.

If an order under the clause is to amend primary legislation, it will be subject to the automatic scrutiny of the House through the affirmative resolution procedure. In all other cases, orders will be subject to the negative procedure. That strikes the correct balance between the need for Parliament to consider and scrutinise such orders, and the demands on its resources. The clause will provide corresponding powers in respect of Northern Ireland.

The Pensions Regulator will be responsible for setting standards of administration and governance in public service pensions schemes, and will have powers to enforce those standards, as required. A key part of that new role is for it to issue codes of practice to enable schemes to know what is expected of them and how to meet the standards. Codes of practice will set out in more detail the legal requirements on schemes and how schemes can fulfil them. Therefore, once the Bill is passed, an independent body will set standards and consider how schemes can best meet them. The Bill also makes it clear that the Pensions Regulator will have to include, in its annual report to Parliament, specific mention of how it has exercised its functions in respect of public service schemes.

**The Chair:** May I clarify that new clause 3 will be debated and can obviously be spoken to now, but that it cannot be moved until we reach the new clauses at the end of the amendment paper?

**Chris Leslie:** Thank you for your helpful clarification, Mrs Brooke. I hope Committee members are looking forward to a fun day of debate on the Bill. I can barely wait for the moment when we have to decide whether to press new clause 3 to a Division, but sadly, given the archaic nature of the procedure, that will not be until the end of the process. For the time being, it is sensible to debate new clause 3 now, grouped as it is with clause 15 on the regulatory oversight of new schemes.

New clause 3 was prompted by Lord Hutton, specifically recommendation 22 on page 17 of the independent public service pensions commission's final report:

"Government should set what good standards of administration should consist of in the public service pension schemes based on independent expert advice. The Pensions Regulator might have a role, building on its objective to promote good administration. A benchmarking exercise should then be conducted across all the schemes to assist in the raising of standards where appropriate."

We are taken with that recommendation, which seems sensible. New clause 3, therefore, seeks to implement that concept by ensuring that the Government receive independent advice on improving standards of administration in public service schemes. New clause 3 would also ensure that the independent review is publicly accessible so that its implementation can be scrutinised and its recommendations can be accessed and implemented by schemes that wish to do so.

Clause 15 triggers schedule 4, which we will debate at another point. Paragraph 14 of schedule 4 makes provision for the regulator to issue codes of practice, but clause 15 does not require the regulator or another independent expert to carry out a review first and then to set out clear principles for good administration in public service pension schemes, which could inform the codes.

From our point of view, there are a number of factors in favour of an independent review. First, an independent review would identify areas of improvement in the national drive for better administration, as well as identifying best practice that can be emulated by other schemes. Given the number of schemes we are talking about and given the need to improve trust and confidence in those schemes, it is important that we take this moment, which is perhaps one of the few moments in a generation when we legislate to make such improvements, to consider how best to set that standard for scheme administration.

Enshrining an independent review in legislation may also inform future codes of practice by considering the possibility of streamlining and combining scheme administrative functions. Lord Hutton's report states:

"The Commission has received suggestions and evidence from a number of commentators that public service pension schemes offer scope for streamlining and combining of their administration functions."

That is important because, obviously, if we are talking about ensuring that schemes have efficient administration and are run cost-effectively, good advice needs to be available to ensure that some of those administrative approaches can be pooled where necessary, but not to the extent that they jeopardise good practice in the operation of those schemes.

An independent review is also worth while because, given the vast number of smaller schemes, it could examine ways in which the local government pension scheme in particular might benefit from economies of scale. The findings of an independent review could make sharing administrative services or contracts more possible. That is the logic behind new clause 3, which springs from the recommendations and conclusions of the Hutton report. It would help to strengthen the Bill and clause 15 by moving in harmony with the provisions that the Minister has already set out.

We do not massively disagree with clause 15, but given the importance of the schemes' regulation, the regulator should be required to play a more active role than clause 15 and schedule 4 currently require. I think we will debate some of those matters later with regard to schedule 4.

**Sajid Javid:** The new clause appears to be concerned with Lord Hutton's recommendation that the Government should set good standards of administration in all public service schemes. He recommended that once those standards are set, benchmarking should be undertaken to improve performance where needed. While we agree with both parts of that recommendation, the new clause is unnecessary, even though the hon. Gentleman made some forceful points. Allow me to explain why.

Through the Bill we are extending the administration and governance requirements placed on pension schemes by the Pensions Act 2004. We are setting the administration standards required of public service schemes, which has not been done before. Up until now they have been exempt from most of the provisions that apply to the governance and administration of schemes. We have carefully examined those exemptions and we could see no basis for those standards to continue not to apply. Schedule 4 therefore sets out the governance and administration requirements on public service pension schemes.

We worked closely with the Pensions Regulator in preparing the Bill. Lord Hutton's recommendation suggested that it could have a role to play in advising the Government. We agreed, because the Pensions Regulator is an independent, risk-based regulator with considerable expertise in the area. Schedule 4 extends its role in regulating the administration and governance of public service schemes, bringing it into line with its role in all other occupational pension schemes.

For completeness, I should mention that in parallel to the changes in the Bill, we also intend to do more to strengthen transparency of scheme governance and administration.

Clause 13, which we have already discussed, allows for information on those matters to be published by schemes or collated centrally by Government. We intend to use that to monitor and drive improvement in scheme administration. The new clause does not appear to offer anything on that aspect of Lord Hutton's recommendation, but it is helpful for the Committee to understand the various components of our response.

**The Chair:** I will invite Chris Leslie, if he wishes, to press the new clause at a later point. He may just like to confirm that.

**Chris Leslie:** I suppose that I do not need to decide at this moment whether to press new clause 3 to a Division. I will listen to the Minister's further comments on schedule 4, but I am not yet satisfied that we have dealt properly with the issues behind my arguments on new clause 3. If it is okay with you, Mrs Brooke, I will hold my fire for the time being.

**The Chair:** Yes, I was not expecting you to speak at this point.

*Question put and agreed to.*

*Clause 15 accordingly ordered to stand part of the Bill.*

**Schedule 4**

REGULATORY OVERSIGHT

**Chris Leslie:** I beg to move amendment 76, in schedule 4, page 28, line 36, leave out 'may' and insert 'shall'.

**The Chair:** With this it will be convenient to discuss amendment 77, in schedule 14, page 35, line 10, leave out 'may' and insert 'shall'.

**Chris Leslie:** I apologise to the Committee that we are dotting about a little on some of the same array of issues. That is in the nature of how the legislation is laid out.

Schedule 4 is one of the most considerable in the Bill, relating to a number of schemes of governance and oversight arrangements. The Minister is right that this is a good opportunity to improve the oversight of public sector schemes under the provisions started in the Pensions Act 2004.

The two amendments are similar. Amendment 77 makes the same point in respect of Northern Ireland as amendment 76 does for the rest of the UK. Amendment 76 refers to line 36 on page 28 of the Bill. Members of the Committee will see that the Government are seeking to insert, after section 90 of the 2004 Act, provisions for codes of practice for public service pension schemes, which state:

"The Regulator may, in relation to public service pension schemes, issue codes of practice…containing practical guidance in relation to the exercise of functions"

and

"regarding the standards of conduct"

and so on and so forth. That is good as far as it goes, but we are surprised and disappointed that the Government are not making that a requirement, and we have therefore suggested that the permissive tone of the schedule should be strengthened by leaving out the word "may" and inserting the word "shall".

We think the codes of practice concerned would undoubtedly help to ensure higher standards of scheme governance and administration. In our view there should therefore be a clear requirement that the codes be produced by the Pensions Regulator, rather than a permissive approach, which could risk situations where no such guidance is produced. Under schedule 4, the codes of practice will, in theory, look at the exercise of functions under relevant pensions legislation—the standards of conduct and practice expected from those who exercise such functions. It would be a great pity were it not a requirement on the regulator to draw up those particular codes of practice and ensure that they are issued.

It may well be that the Minister, voluntarily, has had conversations with the regulator on this issue, and it said, "Okay, well, yes, we will do what we can," but I do not think that is good enough for legislation. I therefore hope that the Minister can see that the amendment would be a tweak to the drafting of the legislation before us, and would be, hopefully, a helpful one. I would be grateful to hear from him the rationale for not accepting the amendment.

**Sajid Javid:** The hon. Gentleman has already presupposed that I am not going to accept his amendment, and he has done well in that. Schedule 4 sets out the new role for the Pensions Regulator in providing regulatory oversight of the administration and governance of public sector schemes. A part of that new role is for the regulator to issue codes of practice to enable schemes to know what is expected of them and how to meet the standards. Codes of practice set out in more detail the legal requirements on schemes and how to fulfil them. The regulator already issues codes of practice for private schemes and these clauses mirror that drafting.

Amendments 76 and 77 would make the overarching power for the regulator to issue codes of practice into a duty. The first amendment is in respect of Great Britain, and the second is in respect of Northern Ireland, but the effect of the amendments is the same for each. Therefore I will speak to the first of the amendments. Paragraph 14 of schedule 4 inserts proposed new section 90A into the Pensions Act 2004. Proposed new section 90A(2) sets out the list of matters in respect of which the regulator must issue codes of practice. That sits under the broader power in proposed new section 90A(1) to issue codes of practice in relation to the exercise of functions under pensions legislation and the standards of conduct of those exercising those functions. The result is that, as currently drafted, the regulator will already be under an obligation to issue codes in relation to certain areas of pensions regulation, as well as having a power to issue codes in relation to other areas.

**Cathy Jamieson** (Kilmarnock and Loudoun) (Lab/Co-op): The Minister is giving an explanation of the powers of the regulator and what is expected of it. During one of the evidence sessions, a number of questions were put to the chief executive of the regulator around the issue of appropriate funding. He gave the very specific response that the regulator wished to focus

"on education and enablement as much as enforcement."—[*Official Report, Public Service Pensions Public Bill Committee,* 6 November 2012; c. 199, Q108.]

There was an indication that there had been some discussions about additional resources to assist the Pensions Regulator in carrying out its task. Can the Minister say how that fits with what he is now telling us? Will there be additional resources, and if so how will the amount be decided?

**Sajid Javid:** The hon. Lady makes a good point. Clearly, this provision asks the regulator to do more than it does currently. Although I have not been involved in any discussions directly with the regulator on this, any request that the regulator makes for additional resources to take on this extra responsibility will be considered very carefully by the Government because there is no point asking it to take on these responsibilities if we do not ensure that it has the resources.

9.15 am

Proposed new section 90A(2)(j) provides, as with the existing section 90 of the Pensions Act 2004 on which this provision is based, for the Secretary of State to add to the list of matters in relation to which codes of practice are required to be issued. Therefore I can reassure the hon. Gentleman that the regulator will

issue codes of practice and that these are a key part of implementing the independent oversight and regulation of public service schemes recommended by Lord Hutton.

**Chris Leslie:** I am grateful for that clarification but I am perplexed by the drafting of the schedule. Proposed new section 90A(1) has the permissive arrangement whereby the regulator may issue codes of practice. The Minister is correct that subsection (2) states:

"The Regulator must issue one or more such codes of practice relating to the following matters".

Is that not strange drafting? There is a "must" requirement in that subordinate subsection (2), which seems to clash with the permissive arrangement in subsection (1), perhaps the primary subsection. Might that be a drafting error? Can the Minister explain why those two subsections seem to cut across one another?

**Sajid Javid:** I can see why the hon. Gentleman has that perception. First, I hope he will accept that the Bill is necessarily complex because of the number of schemes and different areas it is trying to deal with. The drafting he refers to mirrors the Pensions Act 2004. We had to make a decision about exactly the approach to follow but we thought that mirroring what is already there was the correct approach. I hope that reassures him. It is clear from our discussions with the Pensions Regulator that it understood that it must issue codes of practice. He is right to raise the issue and I can see where his concern came from. I hope that I have reassured him enough that he will withdraw his amendment.

**Chris Leslie:** The Minister's word is his bond and it would be churlish of me not to accept his assurance that the codes of practice will be issued. We have probed how the legislation is set out and having had that reassurance, I beg to ask leave to withdraw the amendment.

*Amendment, by leave, withdrawn.*

*Amendments made:* 26, in schedule 4, page 31, line 45, after 'if', insert—

'(a) it is an injury or compensation scheme (within the meaning of the Public Service Pensions Act 2013), or

(b) '.

Amendment 27, in schedule 4, page 32, line 31, after 'if', insert—

'(a) it is an injury or compensation scheme (within the meaning of the Public Service Pensions Act 2013), or

(b) '.—*(Sajid Javid.)*

**Sajid Javid:** I beg to move amendment 28, in schedule 4, page 35, line 26, leave out

'section 113 of the Pension Schemes Act 1993'

and insert

'section 109 of the Pension Schemes (Northern Ireland) Act 1993'.

The amendment makes a minor change to part 2 of schedule 4 to correct an erroneous reference to the Pension Schemes Act 1993. It inserts the appropriate reference to the Northern Ireland provisions in its place. It ensures that the regulator can issue codes of conduct based on the disclosure of information requirements that apply to pension schemes in Northern Ireland, and I commend it to the Committee.

*Amendment 28 agreed to.*

*Schedule 4, as amended, agreed to.*

## Clause 7

### Types of scheme

**Chris Leslie:** I beg to move amendment 50, in clause 7, page 4, line 20, at end insert—

'(3A) A scheme under section 1 which replaces a defined benefit scheme may only be established as a defined benefits scheme.'.

We skip back to clause 7 after having had a little foray further into the Bill to discuss clause 15 and schedule 4. We will now examine the provisions relating to the design and type of the new public service pension schemes. Clause 7 has several subsections, the first of which, rather interestingly, states:

"Scheme regulations may establish a scheme under section 1 as—

(a) a defined benefits scheme,

(b) a defined contributions scheme, or

(c) a scheme of any other description."

That is a peculiar way of drafting the legislation, because the Government promised to provide public service workers with defined benefit pension schemes in the form of career average pensions. However, the Bill does not seem to honour that particular commitment, providing as it does in subsection (1) that schemes created under the Bill can be defined benefit, defined contribution, or any other scheme that the Minister may see fit. The only restriction on the type of scheme, which is set out later in the legislation, is that it cannot be a final salary scheme. The Government have enshrined that side of the agreement in legislation, which is obviously to the benefit of the Treasury. However, they fail to include the corresponding side of the issue, which was the promise that it made to public service workers.

**Cathy Jamieson:** Does my hon. Friend share my concern about the comments made during the evidence sessions by, in particular, the TUC that the inclusion of such a provision in the Bill leads to worries about undermining confidence in the negotiations and discussions that are taking place with the Government around the Bill?

**Chris Leslie:** Indeed, and we have had this debate before. It is important to try to shore up the trust and confidence that public sector employees might have in the Government's approach, given that there are so many suspicions and the fact that the Government recently unilaterally implemented the 3% change and the change in the valuation arrangements totally without negotiation or consultation. Yet Ministers somehow expect no suspicions or question marks to be placed over the Government's motives when they draft legislation in such a way and state in the Bill that schemes cannot be final salary, but do not enshrine that such schemes must be defined benefit. That is why we have tabled the obvious amendment 50, which adds a requirement that:

"A scheme under section 1 which replaces a defined benefit scheme may only be established as a defined benefits scheme."

That should be accepted by Ministers, and it simply seeks to enshrine in legislation the promise that Ministers sought to make.

**Sheila Gilmore** (Edinburgh East) (Lab): One reason why such suspicions exist is that the debate is often still couched in terms of how much better public sector pensions are than private sector pensions, and rather than trying to raise private sector standards, there still seems to be the implication that public sector provision is still too much and it should come down to the level that many in the private sector have been forced into.

**Chris Leslie:** Indeed that is the case; it can be seen in some of the amendments tabled to the Bill by Conservative Back Benchers, and there are others who suggested that, somehow, this is a deal that they might wish to unpick. Therefore, if this is the deal—the final settlement—for the next 25 years, at least, please let us enshrine it in the Bill in the way in which it is intended. The lingering suspicion that the Government are about to renege on the promises they made to replace the final salary scheme with a career average scheme is there in the back of people's minds. That undermines the trust that public service workers have in the Government, and in the pension reforms more broadly.

**Debbie Abrahams** (Oldham East and Saddleworth) (Lab): Is my hon. Friend aware of any impact assessment undertaken on the Bill that reveals the implications for low-paid public sector workers?

**Chris Leslie:** We need to go through those impact assessments. I am not sure that I have seen the impact assessment behind the scheme. Perhaps the Minister will give us an undertaking that he will write to the Committee and copy us in on the Treasury's impact assessments of the new scheme arrangements? That would be very helpful.

It would be an important step if the Minister would assure us that he will, at least, think about tightening up clause 7 to address, essentially, the point that his colleague, the Chief Secretary to the Treasury made in a statement on 20 June 2011. He said:

> "Lord Hutton said himself that 'how people are treated in this process will be as important as the changes to pension schemes themselves'. I wholeheartedly agree with him that establishing a relationship of trust and confidence between the Government and public service workers is critical to the success of these reforms."

Amen to that. We hope that, therefore, the Minister understands why there might be suspicions about the clause as it is drafted.

Our amendment is carefully drafted to pre-empt some of the Minister's comments. We understand that, currently, there may be a small number of defined contribution public service schemes. Our amendment—we hope—does not affect those. The amendment is designed to ensure that, as the Government promised, final salary schemes, which are set to be closed by the Bill, will be replaced only by defined benefit schemes. The amendment merely puts that promise on a statutory footing. The only reason that the Government could have for rejecting the amendment is that they might have their fingers crossed and, at some point, be intent on possibly breaking that promise. Otherwise, I cannot see why they would reject the amendment.

As we have said before, often, Ministers come to this Committee with ring binders filled with beautifully written civil service speeches with big words, emboldened, at the top saying, "Resist this awful Opposition amendment", and the poor old Minister has to do his best to make that case. On this amendment, however, I urge him to set aside the advice that his officials might be giving him to keep the Bill beautifully clean and pristine. I urge him to listen to the anxieties that public service workers have expressed about the nature of clause 7 and to take a look at the constructive, helpful way in which we have drafted amendment 50. We want to enshrine the Government's promise; we are trying to put the Government's own words in the Bill. We are not going further than that, and I hope he will accept the wisdom of the amendment.

**Sheila Gilmore:** In some ways, this comes to the crux of the debate on public sector pensions that has been ongoing for some considerable time. At times, it has exploded into bitter debate and industrial action. A lot of progress seems to have been made in painstaking negotiation over the past couple of years, particularly in recent months. As we heard in the evidence sessions, many, although not all, of the trade union and staff groups that were involved in the discussions felt that genuine progress had been made. They felt that issues they had raised had been listened to, and that there had been a willingness to change some of the original proposals and come up with something that they could recommend to their members. The fact that that stage has been reached is significant.

9.30 am

Some groups have outstanding concerns that may have to be addressed, and a further compromise may be required, but once that has happened and we can move forward it is important that people have the confidence that we are reaching a public sector settlement that will last for a considerable time. Hopefully this will not be the case, but it might be necessary to reconsider the scheme in future. Much of our discussion has been about longevity, and we may or may not have reached the limits of the improvements that have been achieved, largely as a result of better general health, better standards of living and better housing, which mean that people now entering retirement can expect to live substantially longer than their parents and certainly their grandparents. If we have not yet reached that barrier—I think it has been stated that many babies born this year can expect routinely to live to 100, and perhaps that will be exceeded—people might, in perhaps 10 or 15 years, raise similar issues and ask again how the scheme could be made affordable and whether it was necessary to look at a different way of providing pensions.

**Debbie Abrahams:** As always, my hon. Friend makes a valuable contribution to the debate. Does she agree that trust and confidence are the crux of the matter? The amendment would insert into the Bill a provision that was supposed to have been agreed, to ensure that progress made in the negotiations with public service workers will be held in good stead.

**Sheila Gilmore:** I could not have put it better; that is exactly the point. I was trying to suggest that if it were thought necessary in future to reconsider the scheme, changes should be made through primary legislation. The issue is so important that it should not be possible

for a future Government, of whatever nature, to return to the legislation and say, "Ah, but we can do this, because subsection (1) allows us to change the scheme from a defined benefits scheme to a defined contributions scheme without further primary legislation, so that is what we will do." That would destroy trust, and it would be regrettable because it is important that any such changes be debated and negotiated openly. We must not allow them to slip through because we did not make the matter clear in the Bill.

The Government have spoken warm words, but I am anxious because many Government Back Benchers do not appear to support them. The fact that the governing party is not of one mind on the matter makes people uneasy. If those warm words are to mean something, the Bill must make it clear that there is no back-door route by which pension schemes, which have already been greatly altered, can be changed to defined contribution schemes. I have serious concerns about defined contribution schemes and how they have worked in the private sector. Anyone who has taken part in one will be well aware of that. We would have to be cautious before going down that route. I would like us to consider why defined contribution schemes often seem to give us very little more than was put in; I certainly got to the point with one of mine where I thought that I should just put the money under the bed, as it would not be worth any less.

**Sajid Javid:** The hon. Member for Nottingham East mentioned the Chief Secretary, and so will I. I thank him and the hon. Member for Edinburgh East for their comments. As the Chief Secretary and I have asserted repeatedly, the Government are fully committed to implementing the defined benefit schemes that have been negotiated. I am confident that the reforms are sustainable and will last a generation. I assure the Committee that the Government have no intention of replacing the defined benefit schemes with different scheme designs.

**Debbie Abrahams:** But is that not the point? The Minister—I do not want to impugn his reputation, or what he is saying—talks about this Government. It is about future Governments, taking into account the points made by my hon. Friends the Members for Nottingham East and for Edinburgh East. If the language in the Bill is not just right, it could be open to misuse.

**Sajid Javid:** I thank the hon. Lady for her input. I will explain why I do not think that that is a risk or should be of concern, and will point out the Government's reassurance to those rightfully concerned. There is no ill intention behind the clause; the flexibility embedded in it could be helpful to scheme members in future. It would be bizarre for the Government to have invested so much resource in developing and legislating for cost cap and valuation methodologies if we intended to do anything other than retain the defined benefit schemes.

Notwithstanding that commitment, it is important to note that as mentioned by the CBI during the oral evidence session on 6 November, the defined benefit or defined contribution nature of a scheme does not inherently make that scheme good or generous. It may be considered in the context of the terms of the scheme and the needs of that particular work force. For example, many civil servants have chosen to be members of a partnership defined contribution scheme, and such schemes are widely adopted in the private sector too. That shows that some public service workers already have a desire to be part of such schemes, albeit as an alternative rather than as the main form of pension provision for that particular work force.

**Cathy Jamieson:** Will the Minister respond to the point made by Alice Hood during the oral evidence session when she said:

"Seeing the potential for a move to defined contributions schemes there on the face of the Bill is quite concerning, and damaging to member confidence."

**Sajid Javid:** I understand that, but I also understand from our negotiations with trade unions and others in the schemes that they understand why the Government have included the clause. As long as it is well explained in debates such as this one, along with the reassurances that I am clearly providing, no one should look at the clause and think that it involves any hidden agenda. I hope that Alice Hood will read this debate and gather further reassurance.

**Cathy Jamieson:** I thank the Minister for his comments, although I am not entirely sure that it gives reassurance. It was not only Alice Hood who was concerned but Brian Strutton, who said:

"Clause 7 gives the Treasury far too wide-ranging powers to introduce any other type of pension provision, and crucially, without proper parliamentary scrutiny."—[*Official Report, Public Service Pensions Public Bill Committee,* 6 November 2012; c. 159, Q43.]

He thought that there ought to be an affirmative procedure. More than one person expressed concern during the evidence sessions, which the Minister listened to and was present at.

**Sajid Javid:** The hon. Lady is quite right that I listened and that is why I want to make the clause's intention absolutely clear. I also want to point out why it is in the public interest and the interests of taxpayers and future Governments to have such flexibility.

While I see no prospect of the Government wanting to move away from the defined benefit schemes that we have worked so hard to implement, it would not be appropriate for this Government to tie the hands of future generations and pension scheme members who might decide that, subject to the protection offered by the enhanced consultation and reporting obligations of clause 20, defined benefit schemes were no longer the most appropriate for public service workers.

**Mr Nick Gibb** (Bognor Regis and Littlehampton) (Con): I find it ironic that the Opposition are concerned about the possibility of a move away from defined benefit schemes when, as a consequence of their policy in the 1997 Budget, defined benefit scheme members in the private sector went down from 5.8 million to less than 1 million. If they do not agree that that is a direct consequence of that policy, I refer them to confidential internal advice from Treasury civil servants titled "Paper Four" obtained under the Freedom of Information Act, which states:

"The present shift towards defined contribution schemes might accelerate"

*[Mr Nick Gibb]*

as a consequence of the decision to end the tax credit on dividends. I therefore listen with some bemusement when Opposition Members complain about ending defined benefit schemes.

**Sajid Javid:** I thank my hon. Friend for that comment, which shows his experience in this area. The information that he has provided is of great use—*[Interruption.]*

**The Chair:** Order. May I remind hon. Members that they are perfectly entitled to seek to intervene rather than calling out across the room?

**Sajid Javid:** You are quite right, Mrs Brooke.

Clause 20 provides a high hurdle against changes to defined benefit pension schemes, which provides very good protection to public servants for a generation. It is not for us to speculate on how the world of work in either the private or the public sector might look in 25 years' time and what type of remuneration will be needed or wanted at that time. However, I wish to reiterate that a move away from defined benefit schemes in the public service is not the Government's intention.

**Chris Leslie:** Perhaps the Minister's Liberal Democrat colleagues will say that their participation in this Government is the only reason why the Minister is sticking to the defined benefit scheme. As my hon. Friend the Member for Oldham East and Saddleworth said, however, a future Government—heaven forfend that it be a majority Conservative Government, if you can imagine such a prospect, Mrs Brooke—is clearly intent on ripping up the defined benefit schemes. We heard the hon. Member for Bognor Regis and Littlehampton, who is a former Minister, almost licking his lips at the prospect of moving towards defined contribution schemes across the public sector, so we need more than the words of the coalition Minister. I want to hear from him as a Conservative. Is he committed, as a Conservative, to retaining the defined benefit schemes as agreed in his own negotiations and his own promises?

**Sajid Javid:** The hon. Gentleman is getting a bit carried away. The Chief Secretary to the Treasury could not have made the Government's commitment any clearer. I could not have made it any clearer. This is a settlement for a generation. We believe in defined benefit schemes, which are at the heart of the reforms. We want to ensure that those who work hard in the public sector have access to a generous defined benefit scheme. That is the legislation's intention. The hon. Gentleman knows that, and I ask him to withdraw his amendment.

**Chris Leslie:** It is typical of the impression that we sometimes get of the Government's Janus-headed approach that they seek to look both ways on the issue. With one utterance the Minister says there is every intention to stick with a defined benefit scheme—perhaps he had his coalition hat on for that—but then, as a Conservative, he says it would not be appropriate to tie the hands of future Governments.

That is not a 25-year commitment; that might be only a couple of months' commitment, the way things are going for relationships in this tattered Administration. Let us hope that their internal dysfunctions bring them down as soon as possible.

9.45 am

**Mr Gibb** *rose—*

**Chris Leslie:** Speaking of bringing them down, I give way to the hon. Gentleman.

**Mr Gibb:** I believe the hon. Gentleman's earlier intervention was out of order. Lord Hutton made it clear in his final report that the public could not be certain of the sustainability of defined contribution schemes unless reform happened. The Government, led by Conservative Ministers in various Departments, are committed to defined contribution schemes. The point I made in my earlier intervention is that it is ironic that the Labour Opposition are trying to defend defined contribution schemes when it was they who led to the decline of defined benefit schemes in the private sector, which has put pressure on those schemes in the state sector.

However, this Government, whether Conservative or Liberal Democrat Ministers, are committed to maintaining the public sector pension schemes as defined contribution schemes as a standard that the private sector now needs to meet. Before Labour came to power in 1997 it was the other way round. The hon. Gentleman's party is responsible for the state of pensions at the moment.

**Hon. Members:** Hear, hear.

**Chris Leslie:** The hon. Gentleman's comments are supported by "Hear, hear" from the hon. Members around him. However, during that intervention, on four occasions he incorrectly said that the Government are committed to defending defined contribution schemes. I think that on those four occasions he meant defined benefit schemes. We will put that oft-repeated error to one side.

The hon. Gentleman must surely see some suspicion on the employee side when faced with a supposed deal, signed up to by the Liberal Democrat Chief Secretary to the Treasury, that these will be defined benefit schemes. There is a realistic suspicion that the commitment to replacing those existing defined benefit schemes with new ones might have a jolly big question mark over it. That is not least because the Minister has sought to enshrine only one side of the agreement in statute. He is not against putting certain things in the Bill; they must not be final salary schemes. However, there is no symmetrical corresponding commitment the other way in the Bill.

**Andrea Leadsom** (South Northamptonshire) (Con): Does the hon. Gentleman accept that his Government destroyed one of the best private sector pension arrangements in Europe, by abolishing advanced corporation tax relief on pension funds and thereby removing more than £100 billion within a few short years out of private sector pensions? Does he further accept that as a result of that there is now an extraordinary

difference in the terms that public sector retirees are able to enjoy over those in the private sector? While this Government have no desire to have a race to the bottom, does the hon. Gentleman accept his Government's responsibility for that unfairness?

**Chris Leslie:** Does the hon. Lady not understand that while I would be more than happy to debate private sector pension schemes, we are not able to do so under this Bill? By her comments she seeks to give the impression that defined benefit schemes under the agreement signed up to by this Government are not wholehearted and firm. She is almost indicating that defined benefit schemes are too generous and not the right thing to do, when all we are seeking is to enshrine in the Bill the very negotiation and agreement that her own Government have made. That is the anxiety that we have.

**Andrea Leadsom:** The hon. Gentleman completely misrepresents me. As I made clear, the Government have no desire for a race to the bottom. My point was to ask him a question: does he accept that his party's Government were responsible for the unfairness that we are entirely determined to end? Does he accept their responsibility for destroying the private sector pensions that used to be the envy of the world?

**Chris Leslie:** Absolutely not, but as I have said, we cannot debate the state of private sector pensions under a Public Service Pensions Bill. Does the hon. Lady not accept that, by raising the prospect that, somehow, defined benefit schemes are eroded and unsustainable, all she is doing is fuelling the suspicion that, as we see in clause 7—debating which is in order—this transitory, ad hoc and temporary Government, and the Conservatives in particular, are not committed to the deal to which they signed up?

**Sheila Gilmore:** Whatever the reasons for the decline of defined contribution schemes in the private sector, I recently had meetings in my city with both Scottish Widows and Standard Life in which I asked them a specific question, and they both said that, in their view, there are a wide range of reasons for the decline of defined contribution schemes, rather than simply because of a legislative change. In what sense, as has been suggested, does that put pressure on the public sector to change its schemes? During the period in which defined contribution schemes were being introduced in the private sector, we saw soaring wage inequality and hugely increased profits among those companies. Many people wonder whether it is quite so necessary to race to the bottom of the private sector.

**The Chair:** I call Chris Leslie, who I am sure will focus on the amendment.

**Chris Leslie:** Indeed.

That is the point of the debate—the amendment would ensure that, if the Government were to get rid of a defined benefit scheme, they would replace it with another defined benefit scheme. Those are not our words, but the Government's own commitment. I think the Minister said something to the effect that it would be bizarre to do otherwise and that there is no prospect of that scenario happening. Yet every intervention from Government Members suggests, "Defined benefit schemes are risky and unsustainable. That is why we have to keep our fingers crossed and keep open the option of getting rid of them and moving to defined contribution schemes." We have addressed existing defined contribution schemes moving towards—

**Andrea Leadsom:** On a point of order, Mrs Brooke. Is the hon. Gentleman allowed to make blatantly untrue assertions about what Government Members think and say?

**The Chair:** That is not a point of order, but it might be a well made observation.

I call Chris Leslie, who will focus on the amendment.

**Chris Leslie:** I am shocked by the unnecessary point of order raised by the hon. Member for South Northamptonshire. You are right to dismiss her in the way that you did, Mrs Brooke.

All we are trying to do is to keep the Government to their word, which is an important job for the Opposition. If Government Members think that is by the bye, and that we should trust them absolutely when they say that there is no problem whatever in the Bill's drafting, they need to listen to the evidence we heard in our oral evidence sessions.

The Bill enshrines certain aspects of the protections for the employer side by stating, "Thou shall not have final salary schemes." That is fine as far as it goes, but the symmetrical promise to stick with a career average defined benefit scheme does not appear in the Bill. It is not unreasonable for us to ask why that has not been included, nor is it unreasonable for members of schemes who have experienced unilateral impositions, rather than negotiated changes—pension schemes are, after all, deferred wages—to ask that. We are talking about the terms and conditions of hundreds of thousands of hard-working public service workers across the country. I am not going to apologise for attempting to insert the Government's own guarantees into the Bill. There is no good reason for Ministers to reject the amendment, which we have not drafted in a way that would drive a coach and horses through clause 7. We have been careful to ensure that it would allow existing defined contribution schemes to be replaced by new defined contribution schemes; the amendment focuses on the commitment to new career average defined benefit schemes. I am in despair at the fact that the Government cannot find a way to make that commitment.

Perhaps the Minister gave the game away when he said that it was not appropriate to tie the hands of future Governments. People will leave this debate thinking that a future Conservative Government might want to get rid of the new defined benefit schemes. That is the logic of what we have heard from Members on the Government Benches. Instead of standing up and arguing in favour of the deal that was reached in the last period of negotiations, and reached after careful consideration of the Hutton report, instead we have seen them in every intervention—

**Mr Gibb:** Will the hon. Gentleman give way?

**Chris Leslie:** Perhaps this intervention will be a break from the tradition of Government Members seeking to say that defined benefit schemes are somehow for the birds, when the schemes should be enshrined in this legislation. I give way.

**Mr Gibb:** Can I make it clear that throughout the whole of the negotiations the purpose has been to put defined benefit pension schemes on a sustainable, long-term basis? That was the whole essence of the Hutton report and of Government policy. The plan was, and remains, that these provisions should last for at least 25 years. That is the plan: it is what has been promised and what will be delivered by a Conservative Government of the future.

**Chris Leslie:** Those were in part the words I wanted to hear from the Minister—but did not—about a future Conservative Administration, should there ever be such a thing. In that case, the hon. Member for Bognor Regis and Littlehampton will be supporting the amendment, because all we are trying to do is put that issue beyond doubt. Nothing he just said would cut across his support for the amendment, if we have a Division, as that is all we are trying to achieve. Government Members sometimes look at these proceedings with such suspicion, through their blue-tinted spectacles, thinking, "We must never touch an Opposition amendment; they are always trying to trick us and pull the wool over our eyes, those evil Labour people." That is how they might want to characterise us, but that is incorrect; we are simply trying to enshrine on the face of the Bill the Government's own words, as uttered by the hon. Gentleman.

I therefore think it is important that we test the will of the Committee. This is a key moment for the Bill.

*Question put*, That the amendment be made.

*The Committee divided:* Ayes 6, Noes 9.

**Division No. 3]**

**AYES**

| | |
|---|---|
| Abrahams, Debbie | Jamieson, Cathy |
| Ashworth, Jonathan | Leslie, Chris |
| Gilmore, Sheila | McKenzie, Mr Iain |

**NOES**

| | |
|---|---|
| Burt, Lorely | Hands, Greg |
| Doyle-Price, Jackie | Javid, Sajid |
| Evans, Graham | Jones, Mr Marcus |
| Freer, Mike | Leadsom, Andrea |
| Gibb, Mr Nick | |

*Question accordingly negatived.*

*Question proposed,* That the clause stand part of the Bill.

**Sajid Javid:** This clause is concerned with the most fundamental design elements of the new schemes. The Government have been clear that the new schemes being created under the Bill should not be final salary schemes. As Lord Hutton set out in his final report, a final salary design is not appropriate for future public service schemes. In particular, final salary schemes unfairly benefit high flyers, who can receive up to twice as much in pension payments per £100 of contributions.

The Government have announced that they intend to put schemes in place which are of a career average revalued earnings, or CARE, design. That design will minimise the impact on lower earners, while rebalancing risk between the taxpayer and scheme members. The Institute for Fiscal Studies pointed out last week the

"really quite significant distributional changes"

brought about by the reform, which are very positive for lower earners.

10 am

As both I and the Chief Secretary have repeatedly asserted, the Government are fully committed to implementing the schemes that have been negotiated. The Government have spent a large amount of time and effort on the CARE schemes and they intend to deliver them. It would not be appropriate, however, for this or any Government to use primary legislation to tie the hands of future generations. To that end, clause 7 allows for other pension scheme designs if, and only if, future public authorities and pension scheme members decide that, subject to the high hurdle of protection offered by clause 20, CARE schemes are no longer the most appropriate pension design for public service workers. That might seem unlikely, but more than 7,000 civil servants have chosen of their own accord to use the civil service partnership scheme, which is a defined contribution scheme. It is impossible for the Government to predict what public servants will expect from their pension arrangements in more than 25 years' time.

**Debbie Abrahams:** It seems, unfortunately, that the Minister is trying to sell the case for DC. As in the debate on amendment 50, the Government are trying to make the case for DC rather than stating, as they have done previously, that they support DB schemes.

**Sajid Javid:** If that is what the hon. Lady thinks, she has misunderstood. The Government have made a very strong case for DB schemes, and that is clearly the intention of the schemes that are relevant to the Bill. It would not be appropriate to discuss amendment 50 again, but I hope that what I have had to say has provided some reassurance.

**Chris Leslie:** I have a specific question about clause 7. Subsection (5) states:

"Treasury regulations under this section are subject to the negative Commons procedure."

In other words, we do not get the chance to debate such regulations; they simply go through on the nod. If the Minister's commitment to replacing old defined benefits schemes with new defined benefits schemes is genuine, he might give a commitment—we might return to the matter on Report—that if he replaced a defined benefit scheme with a different type of scheme, he would do so under the affirmative resolution procedure. That would be one way of improving the protections so that defined benefits schemes are not replaced with non-defined benefits schemes. Will the Minister consider that suggestion?

**Sajid Javid:** What I and my right hon. Friend the Chief Secretary have said on numerous occasions about the Government's commitment to the matter should

count for something. All schemes covered by subsection (5) will be DB schemes. I mentioned earlier that clause 20 makes it harder to move away from CARE schemes, because it requires consultation with a view to reaching an agreement and it requires a report to be laid before Parliament. Those are high hurdles, which is as it should be. Most importantly, the Government's commitment to providing a settlement for a generation with those types of schemes is absolutely clear.

**Chris Leslie:** A lot of this comes down to the notion that we cannot put protections in the Bill because that would bind the hands of future generations. Nothing would prevent a future Government from introducing primary legislation to amend provisions if circumstances allow, except for the fact that such legislation would be made under the public spotlight. The public would notice if a change was made to the agreement that was reached in 2012 to move from one defined benefits scheme to another defined benefits scheme. Primary legislation is one way to ensure that public service workers have some protections. The notion that protections cannot be included in the Bill must be taken with a pinch of salt.

**Graham Evans** (Weaver Vale) (Con): The hon. Gentleman said that the general public would look at the Bill. What about the 13 million private sector workers who do not have a pension? They will look at these discussions and read what the hon. Gentleman says about defined benefits. They would love to have defined benefits schemes in the private sector, as my hon. Friend the Minister ably pointed out. The general public need to realise that public sector pensions are still the very best on the market.

**Chris Leslie:** I look forward to the Government bringing forward a private sector pensions Bill. I am really keen that they do that because there are ways in which we think private sector pension schemes could be improved. But I do not think there is anything in the Queen's Speech on that. Perhaps the Minister would like to intervene to confirm that the Government have proposals to improve private sector schemes. Yet again, we are left with this sword of Damocles: public sector workers should keep their eyes peeled and glance over their shoulders every now and again, because these defined benefit schemes might not be quite so enshrined as was suggested in the agreement for the coming period. Government Members do not seem to grasp the point we are making in saying that we have to put in the Bill the protections that were agreed in the negotiations. That is all we are saying.

I intervened on the Minister earlier to say that if existing defined benefit schemes are to be replaced by schemes that are not defined benefit, at least that should be by the affirmative resolution procedure so that Ministers cannot do it unnoticed by the back door. We did not even get that rather scant commitment from the Minister. We have tried to get it on a number of occasions. First, we tried to make that change in the Bill through amendment 50. We lost that Division, but we may want to come back to the matter on Report. There might be other ways of doing it, such as ensuring that there is an affirmative procedure. Some protections need to be put in place. Some sort of safeguards are needed, even those related to scrutiny, to ensure that we can at least debate the possibility that the Government will renege on the agreement. That is the lingering suspicion that people will have.

The hon. Member for Bognor Regis and Littlehampton said that a future Conservative Government would be committed to defined benefit schemes under the agreement for a period of 25 years, but I did not hear that from the Minister. I would be happy to give way to him if that is a firm and clear commitment of a Conservative Minister. We have heard that from Liberal Democrats—the Chief Secretary and others—but we have not heard it from Conservatives in the Committee. That is why we are suspicious about clause 7.

There are aspects of the clause that we agree with. It is right to move away from final salary arrangements to career average revalued earnings schemes. We also accept that there are certain existing defined contribution schemes within the public sector. As the Minister said, 7,000 civil servants and others have gone into them already. However, I cannot get away from the fact that the clause seems inadequate and does not reflect the commitments that were made in the agreement. We need to put down a marker that it is deficient and should not stand part of the Bill.

**Sheila Gilmore:** It is particularly important to remember that we are looking at the public sector here. The constant references to relativity are making people anxious. Many people currently employed in the public sector who are in these schemes cannot help but hear the matter being considered in this way, and the suggestion that because defined benefit schemes have almost, but not quite, been eliminated in the private sector, it per se puts pressure on public sector pensions. I am not clear what that is about. Surely we should look at the financial viability of the public sector schemes, as Hutton has, to see how affordable they are now and in the future in their own right. Indeed, there should be aspiration, and it is deeply disappointing that we have got to a stage where public sector pensions are so different from private sector pensions.

Many years ago, I started some research about women in pensions—I confess I did not finish it—whereby I looked at various companies' pension provisions in my own city of Edinburgh. Many—even quite small companies, such as printing firms—offered defined benefit schemes, and some offered final salary schemes to their workers. We have to look at the many and variable reasons why that has declined. We must consider some of the reasons given, but also look at ways in which we can improve the situation.

I do not know the details of the 7,000 public sector workers who have opted in to a defined contribution scheme, but I know that, in the past, some public sector employees were encouraged, or thought it was a good idea, to take up additional voluntary contributions to add to their provision. One such group was nurses who were encouraged to do that with Equitable Life, and we know where that took them. I do not know if this is a top-up or a stand-alone scheme, but we have to ask, now and in future, whether those schemes, as now negotiated, are affordable. If things substantially change in the future, even then we may not want to change the scheme because, presumably, the alternative

*[Sheila Gilmore]*

route would be to continue to raise the retirement age. Alternatively, if we had more growth in the economy, we could, indeed, afford many of these schemes.

I hope that we will talk purely about whether we can afford the public pension schemes, and not constantly measure against the private sector because things have become so poor in the private sector, pensions-wise. We could argue for a long time about why it is that, even in times when companies were successful and making large profits, they still saw fit to end many of their employee pension schemes.

*Question put,* That the clause stand part of the Bill.

*The Committee divided:* Ayes 9, Noes 6.

**Division No. 4]**

**AYES**

| | |
|---|---|
| Burt, Lorely | Hands, Greg |
| Doyle-Price, Jackie | Javid, Sajid |
| Evans, Graham | Jones, Mr Marcus |
| Freer, Mike | Leadsom, Andrea |
| Gibb, Mr Nick | |

**NOES**

| | |
|---|---|
| Abrahams, Debbie | Jamieson, Cathy |
| Ashworth, Jonathan | Leslie, Chris |
| Gilmore, Sheila | McKenzie, Mr Iain |

*Question accordingly agreed to.*

*Clause 7 ordered to stand part of the Bill.*

## Clause 8

### Revaluation

10.15 am

**Chris Leslie:** I beg to move amendment 51, in clause 8, page 5, line 1, after 'Treasury', insert 'reasonably'.

Clause 8 relates to the revaluation of new schemes that are set out under clause 1. The clause requires a revaluation of pensionable earnings until the person leaves pensionable service, and that such a revaluation be by reference to a change in prices or earnings or both in a given period. It has a number of provisions under which the Treasury can determine the change in prices or earnings in any period by reference to the general level of prices or earnings estimated in such manner as the Treasury considers appropriate.

Amendment 51 would not negate that approach; it simply seeks to include the word "reasonably" after "Treasury" in line 1 on page 5, so that the Treasury would need reasonably to consider those things appropriate. It is a small amendment, but it matters because the principle of reasonableness has been established clearly in common law over the years.

**Mr Gibb:** What would the hon. Gentleman regard as reasonable in the revaluation agreed in the various final settlements? The civil service revaluation for the career average scheme is the consumer prices index, whereas for the NHS it is CPI plus 1.5% and for teachers it is CPI plus 1.6%. Which of those does he regard as reasonable?

**Chris Leslie:** They may all be reasonable, but we are not debating those decisions today; we are debating decisions that may be made in future. My point is that clause 8 deals with the governance arrangements for revaluation processes of pensionable earnings accrued by active members of public service pension schemes, going forward year after year. It is perfectly reasonable in certain circumstances for some measures of inflation in prices or earnings to be chosen, but as he can imagine, unreasonable indices or benchmarks might be dreamed up in future, given that the Bill simply specifies, in the broadest possible terms, a measure of prices or earnings.

As we know, there are lots of different indices for prices and earnings. There was some controversy when the retail prices index was replaced with the consumer prices index. Many people questioned the logic of removing mortgage and housing price arrangements from some of those indices. That may or may not have been a reasonable thing to do; it was probably reasonable.

**Mike Freer** (Finchley and Golders Green) (Con): The hon. Gentleman will know the respect in which I hold him, because we have worked together in the past, but I must say that I think that the amendment is completely tautologous. Would the Treasury actually stand up and say, "We are proposing a wholly unreasonable method of calculation"? I do not see the point of inserting "reasonable" when the people defining "reasonable" will be in the Treasury, which will not stand up and say that it is proposing something unreasonable. I do not see the point of inserting the word.

**Chris Leslie:** If it were for the Treasury itself to define "reasonable", I would accept the hon. Gentleman's point, but our amendment is not in that vein. Our point is to enshrine the concept of reasonableness on the face of the Bill so that such measures can be tested justiciably. He will know, having a strong local government background, that the Wednesbury reasonableness test was established in common law in the 19th century, during a famous case in which Wednesbury borough council made a particular administrative decision. It was established in common law at that point that there is a certain set of actions in public administration that it is or is not reasonable to take. For example, a decision that is quixotic, lacking an evidential basis or taken in a way not based on logic, rationality or fairness, in the general understanding of those concepts, may not be regarded as reasonable, and it would be open to persons affected by such decisions to challenge them and seek judicial review, to ensure that good, well-established principles of public administration can be brought to bear on the actions of Ministers and the Treasury. That is why we seek to include the word "reasonable".

The Minister could well say, "This is a moot point. All actions of the Treasury are subject to the reasonableness test." I will be interested to hear whether he is going to say that. If he does, it would be useful to know whether the appropriateness of the Treasury's choice would be open to scrutiny by judicial review if the circumstances arose. As currently drafted, clause 8 leaves that question lingering.

The Bill will change public service schemes from final salary to career average revalued earnings schemes. As the name suggests, revaluation is a critical element of career average schemes. Members' benefits are determined by taking an average of their pensionable earnings for each year of service. Past earnings are revalued to take account of inflation, and earnings relating to early years of pensionable service will be subject to revaluation year on year over a considerable time frame. If such revaluation is inappropriate, the negative effect will be compounded year on year.

As it stands, the Bill allows the Treasury such wide discretion in selecting the measure of inflation that it could pick and choose different measures to best suit its purposes. The Bill does not provide for the use of an objective and accepted measure of inflation. We appreciate that different public service schemes have agreed different methods of uprating pensionable earnings, as the hon. Member for Bognor Regis and Littlehampton has said, so we understand that the Bill cannot prescribe a measure of inflation for all schemes. However, the Bill could and should ensure that the Treasury is reasonable when determining the relevant change in price or earnings in a given period.

Once again, we return to the question of trust. By unilaterally increasing pension contributions by an average of 3% and imposing a change in indexation from RPI to CPI, the Government have already damaged their relationship with millions of public service workers. Clause 8 will undermine that trust further, given the unacceptably wide and unchecked powers that it confers on the Treasury. I do not believe that the Government can legitimately object to amendment 51, because surely the Treasury intends to act reasonably. If so, the amendment has no downside for the Treasury, but it has a significant upside for millions of public sector workers who might take some comfort from the fact that the Treasury accepts an obligation to estimate a measure of inflation in a reasonable manner.

I am sure that the Government intend to act reasonably but, as we know, Governments come and go and the amendment would protect against any future unreasonable actions by the Treasury. I hope that I have explained the concept behind the amendment. It may seem to be a small point, but it would give some assurances to the hundreds, thousands or perhaps millions of public service workers who have a lingering suspicion that the Treasury is loading the Bill in favour of one side of the agreement, which will be unpicked at a future date.

**Sajid Javid:** The annual orders made under clause 8(3) will set out the general changes in prices and earnings. Scheme regulations will point to these figures when setting out how active members' benefits should be revalued to ensure a consistent approach to revaluation across all schemes. That centralised approach will ensure fairness and transparency. The current intention is that the orders will refer to CPI for changes in the general level of prices and to the average weekly earnings index for changes in the general level of earnings. As it is not appropriate for legislation to refer to specific growth measures, which may change or be discontinued, they do not appear in the Bill. Instead, the Treasury is given a limited amount of discretion, as the hon. Gentleman has recognised. He makes, if I may say so, a reasonable point. In providing that discretion, the wording of the clause is consistent with that of other pension indexation legislation, and it makes it clear that the estimates must be made in an appropriate manner. We have tried to follow existing legislation where possible. We are trying to simplify the statutes, not make them any more complex.

**Debbie Abrahams:** The Minister seems to be making the case that inserting the word "reasonable" would be appropriate. Will he confirm that?

**Sajid Javid:** The case I am making is that the amendment is unnecessary, although it raises a fair point, and I hope that our discussion will give some comfort to those who have concerns.

Any attempt to exercise this discretion for any aim other than producing accurate and appropriate estimates with reference to a reasonable index of prices or earnings could be challenged by scheme members. For example, the Treasury could not simply make up a number. When the Treasury exercises the power, any decision that was not reasonable could be challenged by judicial review in any event, so the amendment would not provide any additional protection to scheme members.

I believe that the discretion that the clause gives the Treasury is appropriate, justified and necessary to ensure that revaluation can take place each and every year. I remind the Committee that Members may, if they wish, spark a debate on an order. I urge the hon. Member for Nottingham East to withdraw the amendment.

**Chris Leslie:** I am grateful to the Minister for his words. In a way, our intention was to get him to say on record that the Treasury will always act in a reasonable way, and that seemed to be what he said. A pattern is emerging in our amendments, in that they essentially seek to bolster the deal that has been made while also ensuring that there are protections on both sides. Sometimes such protection is for the employer and the Treasury—we have discussed responsibilities of the Office for Budget Responsibility—and, in this case, it is protection for employees when there are revaluations. Sometimes we suggest that protections should be in the Bill, while sometimes we suggest they should be put in place through addressing order-making powers.

We wanted a commitment that it would be possible to seek judicial review of the Treasury's choice of revaluation instrument. The Minister has given such a commitment—it will be enshrined in *Hansard*—and should the Treasury take any decision that is then challenged on the grounds of reasonableness, the Minister's words can be cited in support of that claim. We have made the point that we wanted to make, and given that the Treasury's concession on reasonable decision making, I beg to ask leave to withdraw the amendment.

*Amendment, by leave, withdrawn.*

**Chris Leslie:** I beg to move amendment 52, in clause 8, page 5, line 6, leave out 'negative' and insert 'affirmative'.

This simple amendment addresses a point that the Minister raised a moment ago. Subsection (5) states that an order made under clause 8 will be subject to the "negative Commons procedure." The Minister indicated that it would be up to Members to spark a debate on an order subject to the negative procedure. I do not know

*[Chris Leslie]*

how many other members of the Committee were first elected in 1997, but I think that the hon. Member for Bognor Regis and Littlehampton has been around the block as long as I have—*[Interruption.]* Longer, indeed, as he did not have a minor interregnum.

The hon. Gentleman will know from his time in opposition how often Back Benchers really manage to trigger a debate on a statutory instrument subject to the negative procedure—it is very rare. This business of praying against statutory instruments involves not physically praying, but lodging a form of petition through which Members can say, "Please can we have a debate on this particular negative resolution?" It is then essentially up to the relevant Minister—it is up to the usual channels but, from the Government Whips' perspective, it is up to the Minister—to decide whether sufficient concern has been expressed that they will allow a debate. That does not happen frequently. In fact, I challenge—or even dare—hon. Members to speak to the Journal Office about how to pray against a statutory instrument.

10.30 am

Hon. Members will, of course, be familiar with where to find the listings of all the statutory instruments subject to the negative procedure that Governments churn out daily when the House is sitting. Perhaps certain Members develop a specialised skill in looking through that, but many do not necessarily spot such things, which is why the amendment suggests that we should use the affirmative procedure. That would put in place a more formalised mechanism meaning that if the Government wanted to uprate pension earnings in career average revalued earnings schemes in a way that did not follow a measure of inflation that we are used to, any order would be subject to the affirmative procedure. Given the broad powers that the Treasury are taking through the clause to pick and choose whatever measure of inflation they reasonably see fit, we do not think that it would be unreasonable to ask that changes should be subject to the affirmative procedure. Oppositions have made such requests before, and I think that hon. Members will understand why we are making such an argument.

**Sajid Javid:** As we have discussed, Treasury orders to be made under clause 8 will set out the changes in prices and earnings to which scheme regulations should refer when revaluing accruals of active members. It is intended that the orders will simply set out the relevant consumer prices index and average weekly earnings figures each year. These national statistics, which are compiled by the Office for National Statistics, are the Government's preferred measures of changes in prices and earnings for the purpose of indexing pension benefits.

The amendment would require the Treasury orders to be subject to the affirmative, rather than the negative, Commons procedure, but that would go against the current approach to indexing public service pensions in payment and deferral. At present, the annual pensions increase review orders made by the Treasury under powers in the Social Security Pensions Act 1975 provide the relevant CPI figure for indexing pensions in payment and deferral. Those orders are subject to the negative procedure. As such orders are routine and simply reflect stated Government policy on their preferred earnings and prices measure, holding a debate on them each year would be an inefficient use of parliamentary time. Of course, Members may call for a debate on an order subject to the negative procedure, if they wish.

**Debbie Abrahams:** My hon. Friend the Member for Nottingham East talked about the importance of the affirmative procedure to this process. I am new to the House, so these procedures are unfamiliar with me, but given what the Minister said about his support for reasonableness, it seems counter-intuitive that he favours using the negative Commons procedure. In addition, it is wholly undemocratic not to allow open debate on such matters, because I understand that the negative procedure requires Members to spot an issue—or for it to be brought to their attention—so that they can raise their particular concerns in a debate.

**Sajid Javid:** I am just as new to Parliament as the hon. Lady, although perhaps I have been here for a few more months than her—*[Interruption.]* I do not think those few months made all the difference.

The hon. Lady makes a fair point because we want to ensure that there is adequate scrutiny of such changes. Importantly, the procedure that the Government are following is no different from what has been done for many years. I referred to the Social Security Pensions Act 1975, and even during the 13 years that her party was in government, orders making such changes were subject to the negative procedure.

The key point is that the Government have set out a procedure, which they will always follow, that is completely transparent and based on statistics that are set independently. The Government have no desire to deviate from that approach. After the orders are laid, discussion can be requested by Parliament, if that is required. It is important to note that there are many demands on parliamentary time, as was the case under the previous Government, and it would be an inefficient use of that time if there was a guaranteed debate when the orders were submitted each year.

**Mr Gibb:** As an old hand in the House—rather shockingly, as I am someone of tender age—may I refute the point made by the hon. Member for Oldham East and Saddleworth that the negative procedure is somehow undemocratic? This is long-standing procedural practice in the House. It is perfectly possible for any Member to table a prayer against a statutory instrument, and I have done so on several occasions. The Opposition are under a duty to monitor these things as part of their role of scrutinising legislation. If they wish to pray against a statutory instrument, it is perfectly possible for them to do so, and I am sure that the usual channels would agree to a debate.

**Sajid Javid:** My hon. Friend's years of experience are valuable to the Committee. The current procedure and the negative procedure provided for in the Bill represent the best balance between the need for parliamentary scrutiny and the efficient use of parliamentary time.

**Chris Leslie:** Perhaps we can forge a compromise between the Benches to try to find the best way forward. If, year on year, the revaluation process will be the same

as that which is being established, the Minister's point about the negative procedure is fair. However, if I accept the Minister's argument that debating all these orders each year under the affirmative procedure could create a heavy administrative work load for the Commons, will he at least consider giving a commitment that, should a revaluation order involve significant change, the Government will find a way of enabling a debate to be held as if it were subject to the affirmative procedure? Can we agree on that compromise?

**Sajid Javid:** I think I am right in saying that the hon. Gentleman used to be a Minister in the Department for Constitutional Affairs, so he more than anyone will understand the way in which our constitution and democracy work—I am sure he has not forgotten. Although the amendment has led to an important and necessary debate—people who are listening to or who read this debate will take comfort from what we have discussed—I do not think that any further changes, or the compromise that he suggests, are necessary. We should keep in mind what my hon. Friend the Member for Bognor Regis and Littlehampton said: if the House wants to debate an order that makes a change that might be described as significant, there are procedures in place to allow for that. I ask the hon. Member for Nottingham East to consider withdrawing the amendment.

**Chris Leslie:** I have been rebuffed again in my attempt to try to get a scintilla of a sliver of a concession from the Government. I had hoped that the Minister would agree to think about the amendment before Report, and even if he then found a reason for not agreeing to it, perhaps it would have been sufficient for him to concede that we could use the affirmative procedure for a significant change and the negative procedure in other cases. It is a shame we do not seem able to make progress.

**Sheila Gilmore:** Does my hon. Friend agree—he might not, given his greater parliamentary experience—that when Government Members somehow say, "Because this is how it has always been done in this place, we should not change it," that is exactly the sort of view that often makes members of the public think that Parliament is not speaking for them?

**Chris Leslie:** That is the fundamental argument underlying the whole debate. I do not want to cast aspersions on our great parliamentary procedures—I do not in any way wish to undermine the democratic veracity of the work that we do in the mother of Parliaments—but there is always room for improvement. It would be perfectly possible for the Minister at least to say, "If we are going to move to a significantly different revaluation arrangement and hon. Members pray against the order, we will be more likely to grant a debate in a Delegated Legislation Committee than might usually be the case when Members pray against an order." The Government sometimes decide not to have a debate when prayers are tabled. Members cannot just spark a debate by putting their name down; it is in the hands of Ministers to grant such debates. If the Minister had said, "Should we move to a more significant revaluation scheme, we will be predisposed to having a debate," that would have been reasonable.

I do not want to labour the point, because we have had an ample discussion about the amendment. The Minister knows what I am asking for. If we get a chance to return to this point in future, perhaps he will find a form of words that will give us a crumb of comfort. We are looking for a pretty small crumb of comfort that would not be impossible for him to concede. We have made our point, however, so I beg to ask leave to withdraw the amendment.

*Amendment, by leave, withdrawn.*

*Question proposed,* That the clause stand part of the Bill.

**Sajid Javid:** The clause addresses the revaluation of earned benefits in new career average pension schemes introduced by the Bill. The clause allows for a revaluation linked to changes in earnings or prices in line with the proposed final scheme designs. The exact mechanisms will vary from scheme to scheme. For example, the NHS scheme regulations will set out that the accruals will be revalued by the change in prices determined by Treasury order plus 1.5 percentage points. Conversely, the firefighters' scheme regulations will set out that accruals will be revalued simply by a change in earnings, again determined by Treasury order. That centralised approach, which mimics the current arrangements for the indexation of public service pensions in payment, will ensure consistency across schemes.

**Cathy Jamieson:** May I draw the Minister's attention to the memorandum submitted by the National Union of Teachers? Will he comment on the revaluation of pensions in payment and deferred benefits, which is governed by the Pensions (Increase) Act 1971? The memorandum states:

"That Act…although recently controversial…does not provide for reductions in pensions entitlement should the formula yield a negative figure. The NUT believes that this possibility should be removed from the revaluation provisions of this Bill as well."

What would the Minister say to the National Union of Teachers?

**Sajid Javid:** Is the hon. Lady referring to the revaluation of the accrual of pensions, or is she referring to pensions in payment?

**Cathy Jamieson:** I am referring to the evidence submitted by the National Union of Teachers, which specifically addresses pensions in payment and deferred benefits and how revaluation is currently governed by the 1971 Act.

10.45 am

**Sajid Javid:** I thank the hon. Lady for that clarification. Clause 8 is about revaluation of pensions as they accrue, not pensions in payment. I have not seen the piece of information from the NUT to which the hon. Lady refers, but I think that our consideration of later clauses might help answer part of her question.

It is important to note that the clause theoretically allows for negative revaluations. It is extremely rare for negative growth to occur. For example, CPI, the Government's preferred measure of prices, has never been negative. None the less, it would be unfair for members to benefit from the upside risk of revaluation

*[Sajid Javid]*

but be shielded from the downside risk. Brief periods of negative growth are unlikely to affect the total value of the pension significantly. If negative growth were overlooked, scheme costs would rise and accordingly eat into the cost cap set out in clause 11, which we will discuss later, designed to control scheme costs. It might lead to a breach of the cap and subsequent measures to increase contributions or reduce the rate at which pension rights can be accrued, because scheme valuations based on standard long-term growth assumptions would essentially underestimate the cost of future accruals. Breaching the cap would therefore be unfair to anyone reaching pension age when positive growth returns, as their benefits may have been reduced to pay for those benefiting from any overlooking. Such intergenerational unfairness is exactly the sort of feature of schemes that the provisions were designed to eradicate.

We should also remember that the Bill maintains defined benefit pensions for public servants that most in the private sector do not have. Those private sector counterparts' pensions are based mostly on investment returns, which can go up or down. It is only right that public servants receive their defined benefit pensions so that they can plan properly and receive the pensions that their hard work deserves, but we cannot and should not go beyond that by protecting their accruing benefits from brief periods of deflation before their pensions come into payment. Lord Hutton called that an asymmetric sharing of risk, and it is not one that we wish to bring to the fore.

The Government's preferred approach, therefore, is for revaluations to track changes to prices and earnings directly. That is consistent with the indexation assumptions used in the calculation of the cost ceilings and during discussions on scheme designs, and it is what we assume in scheme valuations. I commend the clause to the Committee.

**Chris Leslie:** The Minister has set out the purpose behind clause 8. A revaluations process is obviously needed in statute, but if public service workers are to have confidence in the wide-ranging reforms to their pensions, a fair method of revaluing the new career average schemes is essential. Under the schemes, members' pension earnings will be revalued year on year, and unfair or inaccurate revaluations could significantly reduce pension values. That is the rationale behind some of the questions that we have asked and the safeguards that we have sought. As the clause stands, it allows the Government to choose any method of revaluation that they like without reference to an objective standard or an accepted practice of revaluation. Those unchecked powers could undermine further scheme members trust in the Government when it comes to public service pension schemes.

We have serious concerns about the clause—not necessarily about what is on the face of it but about the protections missing from it. Sometimes when we talk about pension revaluations, one can see a grey mist descend as people think about the complexity of schemes. They think, "What on earth is all this language about?" It feels slightly removed from accessibility by ordinary people in the street, but it is about their wages. They may be deferred wages, but we are talking about their income in retirement. Those tricky little calculations in the formula process can spit out at the end something that is good for them, or may be disadvantageous. That is what we have been discussing in the clause.

**Cathy Jamieson:** Does my hon. Friend agree that the point about how people in the real world are affected was put well by Alison Hamilton during the evidence session? She said:

"If, in times of negative inflation, your CPI plus something means that your teacher gets a small increase in their pension, yet the local government worker gets a decrease in what they have saved for, that will cause a bit of concern and confusing messages when encouraging people to save"—[*Official Report, Public Service Pensions Public Bill Committee,* 6 November 2012; c. 174-175, Q67.]

**Chris Leslie:** Absolutely. That point is fundamental to the arrangement. People need vaguely to have a sense that they can grasp how their final pension sums are calculated. Ultimately, a pension scheme is a savings scheme. So many people these days, particularly the younger generations, have turned their backs on pensions generally, because there is so much complexity and opacity. The more there is this sense that somebody will be changing a little element of the formula to their disadvantage, the less likely people are to want to invest. After all, we want people to stay in these schemes and to opt in to them. We do not want people walking away from public service schemes. That would undermine even more the state of public finances.

Even more than that, we want people to have the right level of income in the future. If people are in poverty in retirement and if they do not have the right assets and income, because they had suspicions when they should have been investing in a pension scheme, that will harm our economy more broadly. Getting such arrangements right has ramifications that are about not only defending the public purse and giving confidence to scheme members, but ensuring that people have confidence in the earnings that they will have in retirement, which will ripple across into the economy at large.

Clause 8 may seem like a small clause with much complexity hiding many issues, but it is important. At this stage, part of me wants to vote against it, because of what is missing, but perhaps I should give the Government the opportunity to make improvements on Report or in the other place. Part of me wants to see them come forward on Report with assurances. We have already asked the Minister to provide those extra levels of confidence—those crumbs of comfort that we have been looking for—on the revaluation process, so I will try to give him the benefit of the doubt in the short term. I will not vote against clause 8 at this point, but we genuinely hope that the Minister will come back at a future stage having listened to hon. Members' earnest concerns about the need for further protections to be embedded in it.

**Sajid Javid:** I thank the hon. Gentleman for his comments, particularly when he said that he was willing to give the Government the benefit of the doubt, which is the most that I could expect of him. He referred to the Treasury's having unchecked powers, which is grossly unfair and does not represent the situation at all, and we discussed that matter at some length when dealing

with his previous amendments. I assume that he accepts Lord Hutton's key point that, when it comes to revaluations, the risk sharing must go both ways—positive and negative revaluations.

The hon. Member for Kilmarnock and Loudoun mentioned different methods of revaluation and whether it is earnings or prices, but that links to one of the Bill's key principles as a piece of enabling legislation in that it is designed to give a large degree of flexibility in design to each scheme. It is up to the people who run the scheme, working with their respective work forces, to come up with certain key factors. In the past, the Government have been criticised for being too prescriptive. This is an example of the Government trying to provide flexibility in scheme design.

*Question put and agreed to.*

*Clause 8 accordingly ordered to stand part of the Bill.*

**Clause 9**

PENSION AGE

**Chris Leslie:** I beg to move amendment 80, in clause 9, page 5, line 17, at end insert—

'(d) those members of public service pension schemes to be exempted from the operation of subsection (1) as a result of scheme specific capability reviews.'.

Clause 9 is also a considerable provision. It relates to pension age and the fact that under these new schemes the normal pension age of a person will be the same as the person's state pension age or 65 if that is higher. There are several exclusions from that: fire and rescue workers who are firefighters, members of a police force and members of the armed forces. The normal pension age of such persons under these new schemes will be 60. A number of deferred pension age arrangements are also set out in the clause.

We propose a couple of amendments to the clause. Again, we are seeking to improve the Bill. We do not want to rip up the Government's proposals, many of which are perfectly laudable because they are largely based on the recommendations in the Hutton report, but there are deficiencies in this clause. I hope that amendment 80 points out one of those deficiencies. At line 17 on page 5, we want to introduce a fourth caveat to subsection (1), so that in addition to the normal pension age arrangements not applying to firefighters, police officers and members of the armed forces, they would not apply to those members of public service pension schemes who should be exempted from the operation of subsection (1) as a result of scheme-specific capability reviews. Those reviews are ongoing, and I shall explain what they are, but the whole point of a review is to check people's capability to work until that particular age.

Obviously, with life expectancies increasing, it is reasonable to ask people to work for longer before retiring. No one disagrees with that. Without such adjustments, public sector pension schemes would become unsustainable. That is why we support many of the changes that Hutton recommended. However, there are some categories of workers for whom longer careers are not a realistic option due to the physically demanding nature of their professions. Even with life expectancy increasing, there are some jobs that a 67 or 68-year-old will struggle to do.

The Bill acknowledges that by fixing the normal pension age at 60 for firefighters, police officers and members of the armed forces. However, those are not the only public sector workers who carry out physically demanding work. Other examples include mental health nurses, who have to restrain patients physically, paramedics, cleaners and care workers. There are others who are involved in very physically demanding forms of work. It is inconsistent to make exceptions for some categories of workers in physically demanding professions and, potentially, not for others.

The amendment would allow for further categories of workers to be exempt from the state pension age link under clause 9(1) if scheme-specific reviews found that they were physically unable to carry out their roles after the age of 65. We hope that we are giving some flexibility to the provisions so that those review findings can come to fruition.

**Debbie Abrahams:** Amendment 80 is an excellent provision. The Government have included these different occupational groups and made the clause far too blunt an instrument. I think that they will seriously regret the terms of the clause if they do not adopt the amendment, because within the occupations that they have included there may be workers who will potentially be fit and able to do their job at 60 and 65. As I say, the clause as it stands is much too blunt an instrument, so introducing capability reviews would make it much more sensitive to the difficulties and the physical constraints that many workers have to deal with.

11 am

**Chris Leslie:** I am grateful to my hon. Friend; she might want to intervene later to offer her health service experience, because it is precisely the NHS provisions that prompted us to think about how the clause is drafted. We are not dreaming up the concept of scheme-specific capability reviews; such reviews are already go on. The Department of Health, NHS employers and health unions are jointly undertaking the working longer review, for example. It will make recommendations about the appropriateness of certain NHS staff working beyond the age of 65. That is the crux of the matter, and my hon. Friend has experience within the NHS. The Bill does not exempt any NHS workers from the state pension age link, nor does it provide for the findings of the working longer review to inform further exemptions to clause 9(2). In effect, the Bill makes the review totally redundant, and therefore ends the process before the findings are published. That is an astonishing way for the Government to conduct themselves.

**Richard Fuller** (Bedford) (Con): Does the hon. Gentleman accept that the phrase "scheme specific capability review" is somewhat nebulous? Has he calculated the implications in terms of the unfunded liability of public sector pensions? Does he see it applying to the normal retirement age of those who work in the private sector?

**Chris Leslie:** We are talking about the specific capability reviews that the Government are conducting. The notion of a scheme-specific capability review is well accepted in the Hutton report and Government policy, and the working longer review is the example I have given.

*[Chris Leslie]*

My point is simple: as it stands, the Bill does not allow for any findings of the NHS review to alter the retirement age of those who might find some of their work at 67 or 68 too physically demanding. I am not even saying that we should definitely accept the findings of the working longer review in the NHS; I simply hope that if the Government so choose in the future, they will be able to use clause 9 to implement any recommendations from that review that they see fit to accept under that provision. My amendment is specifically about ensuring that the Bill does not shoot the Government in the foot and unnecessarily binds them from accepting future changes that arise from scheme capability reviews.

**Ian Paisley** (North Antrim) (DUP): The amendment would add considerably to the Bill, in that it gives the Government the necessary flexibility to allow the review—it is like the egg before chicken. What comes first? It would allow proper cognisance to be given to the reviews as they are produced, and as they will be produced over the years ahead. Such flexibility would give significant meaning to the Bill, allow it to acknowledge the needs of people and allow ongoing scheme-specific reviews.

Some reviews might indicate that a person should retire before 60—I am particularly thinking of firefighters, who currently retire in their mid-50s. If, for example, the amendment went further and applied up to the age of 60, it would not do violence to the Government's provisions or the reviews as they come out, but would introduce flexibility to the Bill. If a review indicated that someone had to retire before 60, that would be taken care of in the Bill. It might never happen, but there should be that flexibility.

**Chris Leslie:** I understand the hon. Gentleman's point about firefighters. Indeed, a lot of representations have been made on that by the Fire Brigades Union and others. The amendment might need to be supplemented elsewhere, because we are simply seeking to include in subsection (2) a provision that would disapply subsection (1) for those findings of scheme-specific capability reviews. Obviously, the normal pension age of 60 would still apply in respect of our amendment. Certainly, there are other amendments that could be proposed. We wanted to propose something that is palatable to the Government in this circumstance. We are asking not for the moon on a stick but that the Government's capability reviews are capable of then finding their way into effect should Ministers so want. This is one of those non-partisan opportunities for the Government to reflect on the amendment. It would not be responsible for the House to make legislation before the findings of a NHS working longer review are published, as we need to consider whether the legislation should accommodate some or all of the review's recommendations. It would also be unfair—some might even see it as an underhanded approach—if the Government were to nullify the results of the working longer review in that particular way, given all the effort that has been put into it. It was a key component of the negotiations between employees and the Government in the period preceding this legislation.

This amendment is helpful. It is about asking for some flexibility that will, we hope, help Ministers should they want the scheme-specific capability review recommendations to come into effect.

**Sheila Gilmore:** The problem with the clause is its inflexibility. It creates a situation in which it would be difficult to vary the normal pension age, other than for the three named groups. In earlier debates and in the questions that were asked of witnesses, it was said that the clause does not stop people retiring at an earlier age. This is a normal pension age, but people are free to negotiate or leave work at an earlier age, but that has a significant impact on their income should they do so. A normal pension age will be the age at which we get a non-actuarially reduced pension. Another issue was raised by the hon. Member for Bedford, who asked whether it opened the door to unfunded commitments that might be unaffordable in the short, medium or long term. If we are considering that, and I agree that we must, we must look at the potential costs to Government and to public spending. If people are leaving employment before they are able to secure their full pension—they may secure only a much reduced pension—they will then be eligible to make other claims for financial support, and that might be over a considerable period. Such a commitment has to be factored into the costs of this measure.

**Graham Evans:** Does not the hon. Lady agree that if an employee is not physically capable of doing a job that he or she might have done for 30 or 40 years—hon. Members used the example of various NHS workers—no reasonable manager or management team would insist on their continuing to do the same physical work, but is it not possible for those employees to take up more sedentary positions in clerical and back-office jobs rather than to retire early?

**Sheila Gilmore:** We would have to consider the scope for doing that, but the Government have said that many back-office jobs should be cut in order to concentrate on front-line work. It is also true that in both the private and the public sectors technology has removed some routine administrative jobs, and we now have other ways of doing them. Typing pools, for example, with people sitting typing in rows, are no longer necessary because technology has enabled many professionals to do much of that work themselves.

**Graham Evans:** I do not disagree with the hon. Lady, but if we look at the police service, for example, many police officers retire in their early 50s and are re-employed in the police service in exactly such back-office roles in a police station. The evidence is there for anybody to see. Those are the sorts of positions that may or may not be available in various public sector organisations.

**Sheila Gilmore:** Surely, whether such jobs are available is one of the things we should look for in a review such as that suggested in the amendment. Such a review should take account not only of someone's physical capability to continue doing a job, but of the other options and their availability.

From work that has been done on whether people are in work at various points before retirement age in taking the state retirement pension, we know that substantial numbers of people in many walks of life—particularly men aged between 60 and 65—are already outwith the work force for several reasons, many of which relate to health. That is a significant issue and it must be looked

at in as much detail as possible. We must not assume from the outset that people will be able to do certain types of jobs until they are 65, 66 or 67; that is specific to the proposed rise in the state pension age. If someone is not capable of continuing in their original job, we must look at whether there are sufficient jobs for them to do. I would have thought that the last thing we would want to do is to create or continue with unnecessary jobs. A criticism often levelled at local government is that rather than make people redundant, jobs are sometimes found. That is not necessarily helpful, because it still costs money.

The inflexibility of the clause gives rise to concern from a number of groups. Anyone who is a member of the police force will be able to retire at 60, but no one who is employed in the health service—even in physically demanding jobs, or jobs where staff have to be at the peak of their ability—will be able to. Much of the evidence that we have heard about intensive care unit staff, for example—

**Debbie Abrahams:** My hon. Friend is again making a valuable contribution to the debate. If the amendment is not agreed to, is there not a risk that people will retire in a worse physical condition and shorten their retirement life because they have to continue working under physical duress? Not only that, but the Bill risks widening the gap in society around certain occupations, in which people retire in ill-health and live a shorter life as a consequence. The provision may exacerbate the situation. I would be interested to hear from the Minister what assessment has been made of the effect that the provision might have on different occupational groups. I made the point last week about people in low-income groups not only dying earlier but living in poorer health, and the measure may well make that problem worse.

11.15 am

**Sheila Gilmore:** My hon. Friend illustrates the need to look in depth at the jobs people are doing and the health situations they find themselves, as well as the costs to them, their families and, ultimately, the state, if it has to pick up the pieces. If people leave work on lower pensions, for example, they are more likely to become entitled to greater state support, and we have to factor in that cost.

Perhaps the Minister can explain whether, under the clause, it will be easy for people to reduce their hours. At the moment, it is quite often possible for people—before, and sometimes after, normal pension age—to reduce their hours or days of work. That opens up the possibility, for example, of a job share, which can be helpful at other points on the age spectrum. We have all the issues, which have been much debated of late, and which will continue to be debated, about how we encourage women into the work force or how people can balance child care responsibilities with employment. The ability to match people—one may be at the end of their career, and the other may be at an earlier stage in their career—has always seemed to me to be a win-win situation for both of them, because one can continue with their child care responsibilities and employment, while the other can start the step-down process towards retirement so that it is not quite so abrupt.

One factor that makes it possible for people to afford to do such things is the ability to take part of their pension at that point. That is often good for them, and it can be good for the organisation they work in, because their expertise can be passed on at a point when they are able to work towards their ultimate retirement and to enjoy doing so. Traditionally, it has been suggested that women find retirement easier than men, although I do not know whether that is altogether true. However, the opportunity to work towards retirement is important for people's mental well-being and their ability to cope with retirement.

Will the Minister therefore explain whether it will be possible for people to make such a compromise under the proposals? The amendment would allow different schemes to look at someone's work. As my hon. Friend the Member for Nottingham East said in moving the amendment, they might conclude that there is absolutely no need for any changes in the scheme or in relation to a particular type of work, but they might conclude otherwise . If we are inflexible, we may come to regret it, and we may incur additional costs in public spending.

**Ian Paisley:** I like the amendment, which would add something to the Bill, as I said in an intervention. It would give the Government flexibility and the right to use the review to the advantage of the people who matter. It would allow the evidence gathered in the review to shape policy, rather than the policy to shape the evidence, which is important.

Last week, I was particularly taken by the representations and evidence we received from Dr Porter of the British Medical Association, who told of his personal experience as a senior medical practitioner. He said he did not mind rushing around the wards, putting in lines and dealing with emergency cases while he was in his mid-40s, late 40s and early 50s, but he did not look forward to doing that when he was 67 or 68. There may be people who are fitter, stronger, braver and tougher, who could do that at that age, but he was strongly making the point that flexibility is necessary to get the best out of people. The evidence we have heard from the people who have come to the Committee has been about how the public can give their best, especially in the public sector.

Adding an amendment that would provide flexibility for front-line medical workers, nursing staff with physical demands on them and some care workers would enable the Government to make the Bill much better and stronger, by recognising the needs of certain people. I spoke to the BMA last week and received a letter from Dr Paul Darragh, the chair of the BMA in Northern Ireland, in response to my specific point. He replied:

"The Working Longer Review of the planned increase in the normal pension age for staff in the NHS pension scheme to 68 is currently being undertaken jointly by the UK Government, employers and health unions."

The BMA believes that we should defer to it. Dr Darragh continued:

"The review should be allowed to make genuinely evidence-based recommendations as to whether all or some front-line NHS staff have roles that are particularly physically, mentally and/or emotionally demanding and so should have their normal pension age capped at a lower age."

The amendment would allow that to be taken on board. It would allow us to improve a Bill based on evidence, not to have legislation that creates the evidence, which is the wrong way round.

*[Ian Paisley]*

I was less taken by the evidence we received from the National Union of Teachers. I would be quite happy to see my children taught by someone in their mid-60s. Their wealth of experience can be drawn on and is very much part of the classroom. I would be reluctant see my house in flames and my children rescued by a fire officer in their late 60s. That would not be tolerable. There is a balance to be struck.

**Sheila Gilmore:** The hon. Gentleman's point about teachers and their experience is important. However, a physical education teacher might be in a very different position from some others.

**Ian Paisley:** My comments are not intended to be prescriptive. The amendment would allow for that wider interpretation. If there is an element of physicality that would prevent someone from doing the job—as is part of the Government review—it would allow that to be recognised in the legislation. I am not being prescriptive; I just said I was less taken, when comparing the evidence of fire workers and teachers.

In response to the point made about police officers, I served on the Northern Ireland Policing Board for eight years. We tried to get police officers behind desks out on to the street. I do not like to think of a police officer—trained, skilled and wanting to get out there, catch criminals and deter people from committing crime—coming back to do a desk job at the end of their career. We should recognise there are opportunities for clerical staff, for people less trained and with different skill sets, to do that job until they are 68, rather than a police officer who has a bit of limp, is carrying too much weight or is too old.

**Andrea Leadsom:** It is rather a shame that the hon. Gentleman should say that people with experience on the front line should not bring that to bear in the final part of their career. We would lose a great deal by saying that as soon as someone had finished on the front line they should just clear off. Does he not agree that there is enormous value in those years of experience at the sharp end being brought to bear in a more advisory desk role towards the end of a career?

**Ian Paisley:** The hon. Lady is being rather harsh in her interpretation of what I am saying. I said my experience in our own police authority was that those jobs did not always exist for police officers, and the last place a police officer wants to be is pen pushing or doing clerical work because he or she is no longer deemed to be capable to be out on the street deterring people from crime and addressing community needs. There are frankly not the jobs for them to be revolved from one part of policing into the clerical aspect. We want the clerical work to be done by people who are trained and have a given skill set, rather than by police officers who have a very different skill set. I like the amendment; it does not do any violence to the Government's position, in fact it strengthens it.

**Sajid Javid:** On a point of order, Mrs Brooke. Is it in order for me to point out quickly to the Committee that the Treasury has published online this morning the Treasury's policy towards clauses we will discuss later? It includes further information on clauses 10 and 11 and how schemes may handle them. Copies will be made available to the Committee as we finish now.

11.25 am

*The Chair adjourned the Committee without Question put (Standing Order No. 88).*

*Adjourned till this day at Two o'clock.*