



Department
for Work &
Pensions

Abolition of contracting out: statutory override for Protected Persons Regulations

Government response to public consultation

February 2014

Contents

Introduction	3
Consultation questions	4
Next Steps.....	7
Annex A: Relevant legislation.....	8
Annex B: List of Respondents to the consultation	9

Introduction

1. In order to offset the increased National Insurance contributions employers will face as a result of the end of contracting out for defined benefit pension schemes, the Pensions Bill introduced to the House of Commons on 9 May 2013 includes provision for a statutory override to allow employers to change pension scheme rules without trustee consent.
2. Employers are obliged to consult with members¹ in circumstances where certain changes are made which are referred to as 'listed changes'. Such as any increase in member's contribution and or alteration of future accrual of benefits. The legal obligations apply to large employers, but the Government would encourage all employers irrespective of size, to consult their employees in a way suited to their particular circumstances.
3. There is a small group of individuals (approximately 60,000) employed in some formerly nationalised industries (rail including Transport for London, electricity, coal, nuclear waste and decommissioning), where the employers and trustees are limited in their ability to change scheme rules by legislation made during privatisation. This legislation prevents employers from making changes to the pension benefits offered to those employees who were previously employed by the State. The relevant legislation is set out at **Annex A – the protected persons legislation (“the PPL”)**.
4. On 18 January 2013, the Government began a public consultation² on whether employers who sponsor schemes which include members who are 'protected persons' should be able to use the statutory override in respect of people covered by the PPL.
5. The consultation ended on 14 March 2013. The Government received 145 responses from various sources including individuals, sponsoring employers, pension scheme trustees, trade unions and pension advisors. We also had meetings with stakeholders in connection with the statutory override for the PPL. This document sets out the main points made by respondents generally and provides the Government response.
6. The Government is very grateful to all those who took part in the consultation. A list of respondents is at **Annex B**.
7. This document is available on the Department's website:

<https://www.gov.uk/government/consultations/possible-statutory-override-for-protected-persons-regulations>

¹ The Occupational and Personal Pension Scheme (Consultation by Employers and Miscellaneous Amendment) Regulation 2006 (SI 2006 No.349)

² <https://www.gov.uk/government/consultations/possible-statutory-override-for-protected-persons-regulations>

Consultation questions

Consultation question 1

8. **We asked:** Do you consider it is fair and appropriate for the Department to introduce legislation to allow employers to override the Protected Persons Regulations to change scheme benefits for members who are ‘protected persons’, thereby enabling employers to offset the cost of the additional employer National Insurance which they will face as a result of the end of defined benefit contracting out?

Respondents’ comments

9. Strongly polarised views were expressed by respondents. Trade unions and trustees (and individuals – 118 responses) were against allowing the override to apply to protected persons, arguing that the Government should not renege on promises made to workers at the time of privatisation. However, employer and pension advisers (27 respondents) were in favour of allowing the override to apply to protected persons, arguing that protected persons and non-protected persons should be treated equally.
10. We met with employers, employer representatives and trade unions and their views were unchanged from their responses to the consultation document.

Those not in favour of the statutory override for protected persons

11. Those who were not in favour of the statutory override for protected persons made the following comments:
- Government would be seen as reneging on promises made at the time of privatisation. They expressed the view that any change to pension provision would be viewed as breach of contract of employment. Protected persons should retain their protection.
 - That any changes to pension benefits should be negotiated at employer level without resorting to amending legislation.
 - That the PPL provided very significant assurance and protection to individuals in pension schemes where protected persons legislation applies.
 - Some respondents thought there would be an increase in early leavers by thousands of key staff as older active scheme members (average age 51 years) take early retirement and younger active scheme members would leave their schemes because they could no longer afford to save for their retirement, and as a result members could become worse off in retirement.
 - Public sector workers will not experience any change to their benefits following abolition; the protected persons promise was to reassure former public service employees that they would enjoy the same pension benefits in the new private sector employment.

Restricted – Policy

Those in favour of the statutory override for protected persons

12. Those in favour of allowing the statutory override to apply to protected persons made the following comments:

- Some respondents wanted to ensure as much flexibility as possible for employers in meeting the increased National Insurance costs and suggest that without the ability to use the override as an option, this flexibility would be reduced. A key reason given was financial impact: some employers could pass on costs to employees, but where the override does not apply to scheme members, this could not be an option. They commented that override was proposed by the Government as a mitigation because the end of contracting out was as a result of the Government's decision to introduce single-tier pension.
- Some respondents wanted to treat protected and non-protected persons who are members of defined benefit schemes in the same way – they felt that differences of treatment could, potentially, create employee relations issues.
- Respondents pointed out that the proposed changes to the State Pension were essentially fundamental and would not have been envisaged when the protection regimes were designed in the early 1990s.

Government response

Decision on statutory override for protected persons

13. This is a very complicated issue with many different and conflicting interests. We had to consider the best and fairest course of action in an area where the strength of argument is finely balanced.

14. On one hand we have been strongly urged to honour the promises made at the time of privatisation. We are conscious that for members close to pension age there is little time to make adjustments to their arrangements, and that the issue argued this involves a relatively small group of workers, around 60,000 individuals, who represent less than 4 per cent of the 1.6 million members in private sector contracted-out schemes.

15. On the other hand, employers and the National Association of Pension Funds argue it is important for all scheme members to be treated in the same way when contracting out ends. If protected persons are excluded from the override, employers will look for other ways to offset the loss of the rebate which could affect their employees, their business, or their customers in various ways. There may also be difficulties for some employers caused by differential treatment between parts of their workforce.

16. We also considered that due to the changing pension landscape since many of these industries were privatised, those protected through legislation will, in many cases, have ended up with more generous pension terms than their counterparts in the public sector who have seen changes made to the pension schemes in recent years.

Restricted – Policy

17. On balance, taking into account the small number of workers we think this issue can and should be resolved through negotiation between employers and their employees. The Government thinks it is important to stand by the promises made to former state workers at the time of privatisation. Therefore the Government proposes that employers should not be allowed to use the statutory override to alter the pension schemes in relation to members with protected person status.

Consultation question 2

18. **We asked:** In looking at this issue, the industries we consider where there would be impacts are coal, electricity and rail. We think there are no impacts in the atomic energy and gas sectors. Are you aware of other industries which might be affected?

Respondents' comments

19. We received very few responses to this question. However, affected members have been identified in the nuclear waste and decommissioning industry. Some 13,500 people employed through 7 Site License Companies (SLCs), who undertake nuclear decommissioning activities under contract to the Nuclear Decommissioning Authority, have protections under Schedule 8 to the Energy Act 2004. Approximately 1,500 SLC employees also have protected persons status under the 1989 Electricity Act and the associated protected persons regulations.

Government response

20. We are grateful for the consideration respondents gave to this question. The Government agrees that the nuclear decommissioning workers are covered by the PPL.

Other issues

Respondents' comments

21. Some respondents commented that the Department had underestimated the number of individuals covered by the PPL. It estimated that there are around 20,000 employees in the electricity industry, rather than 10,000 as stated in the consultation document.

22. Respondents informed us that we had omitted to list in the consultation document PPL in Scotland.

Government response

23. The Government now estimate that around 60,000 scheme members with protected persons status are covered by the PPL rather than 50,000 as stated in the consultation document. The Impact Assessment has been updated to reflect these revised figures.
24. We have also noted their comments about not listing the PPL in Scotland that relates to the electricity industry. We will ensure that the legislation makes relevant provision for Scotland in that context. For clarification last year's consultation only applies to England, Wales and Scotland. It is anticipated that corresponding legislation will be brought forward for Northern Ireland.

Next Steps

25. The Government would like to thank all those who have offered their views and advice in the consultation document. At the earliest opportunity we intend to make the appropriate legislative changes to ensure the statutory override cannot be applied in respect of scheme members with protected person status.

Annex A: Relevant legislation

Estimates of the numbers protected by the various pieces of legislation.

Protected Persons			
Industry	Employers	Employees	Legislation
Electricity	c.134	c.20,000	<p>Schedules 14 and 15 to the Electricity Act 1989 Schedule 15 of the Electricity Act 1989</p> <ul style="list-style-type: none"> The Electricity (Protected Persons) (England and Wales) Pension Regulations 1990 (SI 1990/346) The Electricity (Protected Persons) (Scotland) Pension Regulations 1990 (SI 1990/510)
Nuclear waste and Decommissioning	7	1,500	<p>Section 46 of and Schedule 8 to the Energy Act 2004.</p> <ul style="list-style-type: none"> Paragraph 9 of Part 4 of Schedule 8 to the Act Paragraph 10 and 11 of Part 4 of Schedule 8 to the Act
Rail (including London Transport)	201	36,000	<p>Schedule 11 to the Railways Act 1993</p> <ul style="list-style-type: none"> The Railway Pensions (Protection and Designation of Schemes) Order 1994 (SI 1994/1432)
			<p>Schedule 32 to the Greater London Authority Act 1999</p> <ul style="list-style-type: none"> The London Transport Pensions Arrangements Order 2000 (SI 2000/3386)
Coal	60	1,297	<p>Schedule 5 to the Coal Industry Act 1994</p> <ul style="list-style-type: none"> The Coal Industry (Protected Persons) Pensions Regulations 1994 (SI 1994/3070)

Annex B: List of Respondents to the consultation

Arriva Trains Wales Ltd	RWE npower
ASELF	Scotia Gas Networks
Association of Electricity Supply Pensioners	ScottishPower
Association of Pensions Lawyers	South Eastern Railways
Coal Pension Trustees Services Ltd	The Confederation of British Industry
DB Schenker Rail (UK) Ltd	The National Association of Pension Funds
DeltaRail Group Limited	The Pensions Committee of New Cross County of the Railways Pension Scheme
Dundas & Wilson CS LLP	The Society of Pension Consultants
East Coast Main Line Company Limited	
EDF Energy	Trades Union Congress
EDF Energy Generation and Supply Group of the Electricity Supply Pension Scheme (ESPS)	Transport for London
Electricity North West Limited	Transport Salaried Staffs' Association
Electricity Pensions Trustee Limited GMB	Trustees of Manweb Group of the ESPS
Law Society of Scotland	Trustees of the British Energy Generation Group of the ESPS
London Overground Rail Operations Ltd	Trustees of the National Grid plc of the ESPS
Mercer	Trustees of the Viridian Group Pension Scheme (2011)
National Grid plc	Trustees of the Scottish Power Pension Scheme
National Union of Mineworkers	UK Power Networks
National Union of Rail, Maritime & Transport Workers	UK Power Networks Group of the ESPS
Network Rail	UNISON
Northern Ireland Electricity Limited	UNISON Manweb Branch
Northern Powergrid	Unite
Prospect	Virgin Trains
Railcare Limited	
Railways Pension Trustee Company Limited	

