

On 13 September the Government published the long awaited Public Service Pensions Bill 2012, which will enable new public sector pension schemes to be established. The Bill sets out a high-level framework, with detail to be included in individual pension scheme regulations. However, if the Bill is passed without amendment some very clear principles will be enshrined in the primary legislation.

1. **HM Treasury is in the driving seat:** its consent is required for all of the implementing pension scheme regulations, except for certain schemes in Scotland (local government, fire and rescue workers and police force) and Wales (fire and rescue workers) and any schemes in Northern Ireland.
2. **No more final salary pension schemes:** despite the fact that negotiations are on-going with some unions and in some parts of the country (notably in Scotland) the Bill prohibits any new pension scheme from providing final salary benefits. Pension schemes can provide career average revalued benefits (or any other defined benefits HM Treasury may specify) or, interestingly, defined contribution benefits. Final salary benefits accrued in the current pension schemes (which will be closed to future accrual by the Bill) will be fully protected (including a link with salary). The Local Government Pension Scheme (and others) will also give transitional protection to anyone within 10 years of retirement when the new pension schemes are introduced.
3. **Increases to Normal Retirement Ages:** in the new pension schemes NRA's must be linked to State Retirement Age (or, as is still the case for some women, age 65 if higher). With the SRA due to increase to 67 by 2028 and further increases mooted if longevity improvements continue, public sector workers will find the calculation of benefits at their chosen retirement date (which need not be their "normal" retirement age) affected. Future changes in SRA will impact on past and future service benefits in the new pension schemes (but not benefits earned in the current pension schemes). This could present practical difficulties with calculating the cost of benefits, as the NRA for each tranche of CARE service will not be known for certain at the time of accrual.
4. **Costs will be controlled:** as further evidence of HM Treasury's influence, the cap on employer contributions envisaged by the Hutton Report is to be implemented, with HMT in control of setting the maximum level of employer costs. If employers, members and unions cannot agree how to keep costs within the cap then pension scheme regulations may provide for automatic increases in member contributions and/or reductions in benefit accrual. How such agreements will work in practice remains to be seen. On the other side of the cost equation, HMT is also given

power to set the assumptions for actuarial valuations of the new pension schemes. It will be interesting to see how this power affects the LGPS in particular, where individual funds are currently responsible for setting their own assumptions. It is also not yet known whether the cost of funding deficits built up in the present LGPS could be affected by these new controls.

5. **A Fairer Deal:** separately, in a footnote to a Department for Business Innovation and Skills response to a call for evidence on transfers of employment, the Government has confirmed its intention to open up all public sector pension schemes to participation by contractors and others providing public services and to end the current regime of certifying broadly comparable private sector pension schemes. The Bill does not deal with this in any detail and we are still waiting for the further information that Danny Alexander promised in July.
6. **Multiple pension schemes and benefits:** the Bill envisages that separate pension schemes will be established for different groups of public sector workers in the same way as currently; the Hutton Report's suggestion of moving to a one-size-fits-all benefit design has not yet materialised. We do not believe the intention is to disturb the present framework of separate LGPS funds operated by individual administering authorities, but this detail will be provided by the new pension scheme regulations. Similarly, it is not yet clear whether there will actually be new schemes or just new benefit structures for future service in the existing pension schemes.



7. **Governance:** each of the new pension schemes will be required to appoint a “manager” to oversee its administration and a “pensions board” to oversee the manager. Specific obligations relating to governance are imposed on these offices – for example, members of the pensions board must not have a conflict of interest and will need to satisfy similar knowledge and understanding requirements as trustees of private pension schemes. This is arguably one of the biggest steps forward, certainly for the unfunded pension schemes and also for elected councillors involved in LGPS management. The list of knowledge and understanding requirements for public sector pension schemes is not quite as lengthy as for private pension schemes – for example, there is no mention of investment or funding matters (although there is a power to add such matters to the list in regulations). Whilst this makes sense for the unfunded pension schemes, we would have expected those involved with the LGPS to be required to be conversant with investment and funding matters (as exemplified by CIPFA’s knowledge and skills framework; Squire Sanders provides legal input to a guide on this topic prepared by UBS and the West Midlands Pension Fund). This is an example of one area where the Bill’s draftsman has had a difficult job to set out enabling provisions that are suitable for every public sector pension scheme.
8. **Brighton calling:** the Pensions Regulator will for the first time be given jurisdiction over public sector pension schemes. It will have power, if it considers desirable, to require the appointment of a “skilled person” to assist the pensions board with its functions and will be required to issue a specific code of practice dealing with governance matters. At the time of writing, the Pensions Regulator had not issued any statement about how it plans to meet these additional responsibilities. This is a vast change, albeit one that had been leaked at the NAPF LGPS conference in May. Given that the Pensions Regulator has also been given oversight of auto-enrolment compliance, the challenge for resources will be significant. Public sector pension schemes may be concerned at the possibility of an over-zealous approach to regulation and enforcement.
9. **A lasting settlement:** given the difficulty of achieving the political settlement, the Government intends the new pension schemes to be sustainable. Changes with a negative impact on benefits or member contribution rates are not permitted (other than under the employer cost cap mechanism) for a period of 25 years unless employers consult with affected members and their unions and lay a report before parliament. Such attempted future-proofing, which is laudable in many respects, may raise sceptical smiles in some quarters, given the projected savings in GDP terms arising from these reforms are negligible.
10. **Challenging timescales:** all new pension schemes must be in operation by 6 April 2015. This will cause a challenge for many. No decision on benefit structure has been made for any pension schemes in Scotland, for example. The deadline for the new LGPS in England and Wales is a year earlier, as part of the package agreed with unions to avoid the member contribution increases that started in April 2012 in other public sector pension schemes. Due to the lead-in time needed by LGPS administrators, this will require new pension scheme regulations to be in place by April 2013 as previously indicated by the Department for Communities and Local Government. There is the ability in the Bill to “grandfather” provisions from the existing LGPS regulations for England and Wales into the new pension scheme regulations that will help with timing, but the new regulations can only be passed after the Bill receives Royal Assent so the clock is ticking quite loudly. The Bill is due to receive its second reading in the House of Commons on 22 October 2012.

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