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Teachers Pensions – 2015 onwards

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Summary

The Teachers' Pension Scheme is a public service pension scheme. Like the other main public sector schemes (apart from the Local Government Scheme) it operates on a pay-as-you-go basis, which means that contributions from employers and employees are made to the sponsoring government department, which meets the cost of pensions in payment.

Reforms were introduced from April 2015 under the *Public Service Pensions Act 2013*. Key changes were: linking the pension age to the State Pension age; a shift to providing pensions based on career average earnings rather than final salary; and a cap on employer contributions to apply in future. Active members were transferred to the new scheme except those covered by transitional protection arrangements for those 'closest to retirement', who were allowed to remain in their scheme either until retirement or for a limited period, depending on their age. There are factsheets explaining how the scheme changed in 2015.

The rules are in *Teachers' Pensions Regulations 2014 (SI 2014/512)* and *Teachers Pensions Regulations 2010 (SI 2010/990).*

This note looks at how the scheme has developed, the debate around the main reforms introduced in 2015 and some ongoing issues.

The development of the scheme is discussed in more detail in Library Note SN 405 Teachers' Pensions – background.

1. Background

1.1 Overview

The Teachers' Pension Scheme is a statutory, unfunded, defined benefit occupational pension scheme. It is split into three sections, with different normal pension ages (NPA), depending on the age of joining. (The normal pension age is the earliest age at which an occupational pension can be drawn unreduced, other than on ill-health grounds).

- The NPA 60 section caters for those who entered the Scheme before 1 January 2007 and has a normal pension age of 60.
- The NPA 65 section caters for those who entered the Scheme for the first time on or after 1 January 2007 but before 1 April 2015 or who transitioned from the NPA 60 section following Scheme reform and has a normal pension age of 65. Both this and the NPA 60 section provide benefits based on final salary and length of service.
- The 2015 section caters for those who entered the Scheme for the first time on or after 1 April 2015 and those who transitioned from the NPA 60 and NPA 65 sections following the latest Scheme reforms. The 2015 section provides benefits based on career average earnings and has a normal pension age equal to state pension age.[1]

The three sections reflect reforms introduced in 2007 and 2015:

- Reforms introduced in January 2007 included an increase in the NPA for new entrants, from 60 to 65. The detailed rules are in the *Teachers Pensions Regulations 2010 (SI 2010/990)* made under the *Superannuation Act 1972.*
- The *Public Service Pensions Act 2013* required the introduction of new public service schemes from April 2015. Key elements of the reforms included: linking individuals' NPA to their State Pension age; a shift to providing pensions based on career average earnings rather than final salary. Active scheme members as at April 2015 transferred to the new scheme except those covered by transitional protection for those 'closest to retirement'. The rules for this section are in the *Teachers' Pensions Regulations 2014 (SI 2014/512).*

Guides to the scheme and factsheets explaining how the scheme changed in 2015 are on the Resources section of the Teachers' Pensions website.

1 Teachers' Pension Scheme (England and Wales) Annual Report and Accounts for year ended 31 March 2016, HC 371, July 2016

1.2 Overview of scheme rules

The table below shows the main features of the three sections of the schemes for Teachers in England and Wales:[2]

	NPA 60 Section	NPA 65 Section
Basis of provision	Final salary	Final salary
Contracted-out/in prior to 2016	Contracted-out*	Contracted-out*
Normal pension age (NPA)	60	65
Pension accrual rate	1/80	1/60
Retirement lump sum accrual rate	3 x pension plus commutation at £12: £1 pa	Cash by commutation only (£12: £1pa)
Final pensionable pay	Better of: a) last 12 months' pensionable pay; b) average of best 3 consecutive years' pensionable pay in last 10 years (revalued in line with the Pensions Increase (PI) Act to date of exit)	
Dependant benefits	50% of member pension (pre-commutation)	37.5% of member penson (pre-commutation)
Ill health pension	Total incapacity benefit - pension based on actual service plus half of potential service to NPA. Incapacity benefit - pension based on actual service (but no reduction for immediate payment)	
Pension increases	In payment - increased in line with the *Pensions Increase (PI) Act* on excess over GMP. In deferment - total pension increased in line with the PI Act.	

*future benefits unaffected by contracted-out status

	2015 scheme
Basis of provision	Career average with revaluation of CPI + 1.6% pa whilst in service
Contracted-out/in prior to 2016	Contracted-out*
Normal pension age (NPA)	Higher of a members State Pension age and 65
Pension accrual rate	1/57
Retirement lump sum accrual rate	Cash by commutation only (£12: £1pa)
Final pensionable pay	Not applicable
Dependant benefits	37.5% of member pension (pre-commutation)
Ill health pension	Total incapacity benefit - incapacity benefit plus 50% prospective service to NPA, multiplied by 1/57 of the member's annual rate of pensionable earnings. Incapacity benefit - accured pension, no reduction
Early retirement	Benefits reduced for early payment. The reduction is actuarially neutral on a deferred benefit basis, except that for retirements directly from active status the reduction applying to the period between 65 and NPA is 3% a year (up to a maximum of 3 years)
Pension increases	In payment - increased in line with the *Pensions Increase (PI) Act* on excess over GMP. In deferment - total pension increased in line with the PI Act.

* benefits unaffected by contracted-out status

[2] GAD, Teachers' Pension Scheme. Actuarial valuation as at 31 March 2012. Report by the Scheme Actuary, June 2014, (Appendix B: Summary of benefits).

1.3 Scotland

The Scottish Teachers Superannuation Scheme is managed by the Scottish Public Pensions Agency.

Although, occupational pensions are reserved to the UK Parliament,[3] Scottish Ministers have executive powers devolved to them.[4] This means Scottish Ministers have responsibility for the content of regulations governing the Scottish Teachers Superannuation Scheme, although the consent of the Treasury to the making of regulations is still required.

HM Treasury underwrites the pension liabilities directly by providing AME support for net pensions in payment.[5] The Independent Public Service Pensions Commission pointed out that "although there has been scope for some variations in terms [of public service pension schemes] to meet local circumstances, but the resulting pension schemes have essentially been the same as those established by the UK Government."[6]

The key features of the scheme introduced in April 2015 are in line with those introduced in England and Wales – see 2015 Scottish Teachers' Pension Scheme FAQs.[7]

There is also guidance on the Teachers' 2015 scheme. The rules for the scheme are on the SPPA website. For more on the background to the reforms in Scotland – see SPICe briefing paper Pensions (June 2014).

1.4 Costs and numbers

The most recent membership figures are in the table below:[8]

	England and Wales	**Scotland**
Active members	673,695	81,347
Deferred members	545,629	17,858
Pensions in payment (including dependants)	695,044	73,114

Teachers' pension scheme (England and Wales): annual accounts 2015-16
Scottish Teachers' Superannuation Scheme. Annual Report and Accounts 2014-15

In 2012, the average pension in payment from the TPS was £10,362.[9] The interim report of Lord Hutton's Independent Public Service Pensions

3 Paragraph F3 of Schedule 5 to the *Scotland Act 1998;* The Orders made under the *Pension (Increase) Act 1971* (which provide for annual increases in public service pensions) are reserved to Westminster

4 *The Scotland Act 1998* (*Transfer of Functions to the Scottish Ministers etc.) Order 1999* (S.I. 1999/1750)

5 Source: HM Treasury

6 Independent Public Service Pensions Commission: Final Report, 10 March 2011

7 EIS Scottish Teachers' Pension Scheme 2015

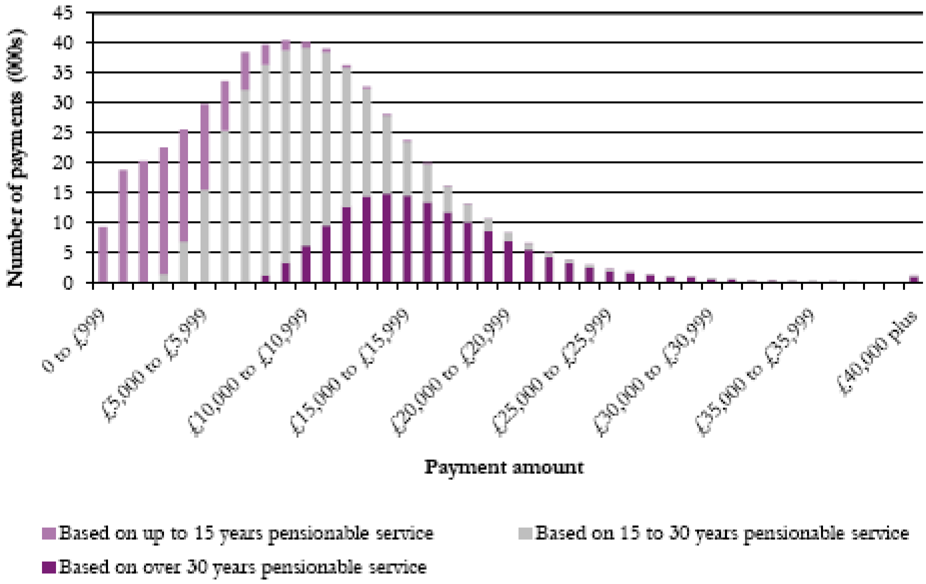
8 Teachers' Pension Scheme (England and Wales) Annual Accounts for year ended 31 March 2016; Scottish Teachers' Superannuation Scheme Annual Report and Accounts 2014-15

9 GAD, Teachers' Pension Scheme Valuation Report 2012, June 2014, table A3
See also Independent Public Service Pensions Commission: Interim Report, 7 October 2010, table 1.C, page 31

Commission found that an important reason for differences in pension payments was length of service:

> 1.31 One important reason for differences in pension payments is length of service. Chart 1.E shows that this is a key determinant of the distribution of pensions from the teachers' pension schemes.

Chart 1.E: Pensions in payment from UK teachers' pension schemes



Source: IPSPC analysis of scheme returns data.

1.5 Contribution rates

Like most of the public service schemes, the Teachers' Pension Scheme operates on a pay-as-you-go (PAYG) basis. [10] This means that employer and employee contributions are paid to the sponsoring government department, which pays out pension benefits, netting off the contributions received.

Employee contributions

The rate of members' contribution is in regulations.[11] As discussed in section 4.3 below, member contribution rates have increased in recent years. Current rates are in the table below:[12]

10 The main exception is the Local Government Pension Scheme, which is funded. The pension scheme for MPs (the Parliamentary Contributory Pension Fund) is also funded.

11 SI 2014/512, reg 185; SI 2010/990, regs 18 and 27 and Sch 3; SSI 2005/393, reg C3

12 Teachers' Pensions website

Annual salary for the eligible employment from 1 April 2017	
Up to £26,259.99	7.4%
£26,260 to £35,349.99	8.6%
£35,350 to £41,914.99	9.6%
£41,915 to £54,549.99	10.2%
£55,500 to £75,749.99	11.3%
£75,000	11.7%

Employer contributions

Employer contributions are set on the basis of periodical actuarial valuations.[13] The contribution rate has in two parts – a standard rate to cover the cost of accruing benefits, and a supplementary contribution to fund any deficit:

> First, a standard contribution rate (SCR) is determined. This is the contribution, expressed as a percentage of the salaries of teachers and lecturers in service or entering service during the period over which the contribution rate applies, which if it were paid over the entire active service of these teachers and lecturers would broadly defray the cost of benefits payable in respect of that service. Secondly, a supplementary contribution is payable if, as a result of the actuarial investigation, it is found that accumulated liabilities of the Account for benefits to past and present teachers, are not fully covered by standard contributions to be paid in future and by the notional fund built up from past contributions. The total contribution rate payable is the sum of the SCR and the supplementary contribution rate.[14]

Employer contribution rates are currently 16.4%, up from 14.1% in September 2015, reflecting the valuation of the scheme as at 31 March 2012.[15]

In Budget 2016, the Government said it had reviewed the discount rate used for measuring the liabilities of the unfunded public service pension schemes, with the result that employer contributions would increase from 2019/20.[16]

The School Teachers Review Body referred to this as one of the pressures on school budgets.[17]

For more detail, see

Library Briefing Paper CBP-07539 Public service pensions – employer contributions (April 2016).

[13] *Teachers' Pensions Regulations 1997* (SI 1997 No. 3001), regulation G4

[14] DCSF, Teachers' Pension Scheme (England and Wales) – Financial Note, May 2008; See also, *The Teachers' Pension Scheme (England and Wales) Actuarial Review as at 31 March 2004, Report by the Government Actuary November 2006*, para 6.5-6; See also DfEE, Report of the working group for the longer term examination of the Teachers' Pension Scheme, July 1999, para 4.4

[15] Teachers' Pension Scheme (England and Wales) Annual Report and Accounts, HC 371, July 2016, para 1.14; HC Deb 13 March 2014 c31-2WS

[16] HM Treasury, Budget 2016 –policy costings, p70

[17] School Teachers' Review Body, Cm 9302, para 2.67; July 2016; See also HC Deb 25 January 2017 c357-408

1.6 The Labour Government's reforms

Changes to the scheme were introduced on 1 January 2007, affecting new entrants from that date. Key features were that:[18]

	Pre 2007 members	New entrants from 1 January 2007
Normal Pension Age	60	65
Members' contributions	6.4%*	6.4%*
Employer contributions	14.1%	14.1%
Members' Pension Benefits	1/80th final salary for each year reckonable service	1/60th for each year of reckonable service
Lump sum	Three times the pension (and more scope to take a higher tax-free lump sum and a lower level of pension)	Option to give up £1 of annual pension in exchane for £12 of tax free lump sum, up to a maximum of 25% of the fund value

**Variable at future valuations through the cost sharing mechanism*

For more detail, see

Library Note SN 405 Teachers Pensions – background (Sept 2013); and SN 5252 Public service pensions – cost capping and cost sharing (Dec 2011)

GAD, Teachers pension scheme (TPS) Key features pre/post 1 January 2007

The reforms included a 'cap and share' agreement, to deal with future cost pressures.[19]

This agreement was introduced as part of the package of reforms which came into force on 1 January 2007.[20] The Labour Government expected it to "deliver long-term sustainability through the reduction of taxpayer exposure to risks, principally those associated with improvements in longevity over and above improvements already anticipated."[21]

The National Audit Office (NAO) looked at changes introduced the Teachers', NHS and civil service schemes in 2007-08. It concluded that:

> As a result of the changes, which are on course to deliver substantial savings, long-term costs are projected to stabilise around their current levels as a proportion of GDP. The changes are also set to manage one of the most significant risks to those costs, by transferring from taxpayers to employees additional costs arising if pensioners live longer than is currently projected.[22]

It expected the changes to "reduce annual costs to taxpayers in 2059-60 by 14 per cent compared to what they would have been without the changes." [23]

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[18] For more detail, see Government Actuary's Department, Teachers Pension Scheme (TPS) Key features pre-post 1 January 2007
[19] DfEE, First class, adaptable, sustainable. Teachers' Pension Scheme England and Wales: Consultation, para 4.10.1
[20] *Teachers Pensions Regulations 1997* (as amended), regulation G5
[21] HC Deb, 26 July 2007, c105WS
[22] NAO, The impact of the 2007-08 changes to public service pensions, HC 662, Session 2010-2011, para 2.1
[23] Ibid, Executive Summary, para 5 and para 2.7

2. 2015 reforms

The Coalition Government introduced a series of reforms to public service pensions. The first change introduced was a switch in the measure of prices used to increase public service pensions in payment from the Retail Prices Index (RPI) to the Consumer Prices Index (CPI).[24] This was controversial because the CPI tends to produce lower increases. For more detail, see Library Briefing Paper CBP-05434 Public service pension increases (May 2012).

2.1 Independent Public Service Pensions Commission

It then established an Independent Public Service Pensions Commission, chaired by Lord Hutton of Furness, to undertake a review of public service pensions.[25] In his interim report, published in October 2010, Lord Hutton gave the following assessment of the recent reforms:

> **Ex.12** All these past reforms, the current pay freeze and planned workforce reductions will reduce the future cost of pensions. The gross cost of paying unfunded public service pensions is expected to fall from 1.9 per cent of GDP in 2010-11 to 1.4 per cent of GDP by 2060 as the central projection of Chart 1.B shows.
>
> **Ex.13** However, these measures will take many decades to fully affect the costs of pensions in payment, which are heavily influenced by existing pensioners, the vast majority of whom are still in pre-reform schemes. The Commission estimates that gross expenditure on unfunded public service pensions will remain close to current levels as a proportion of GDP over the next decade.[26]

He said the Labour Government's reforms had not fully addressed the underlying issues of sustainability and fairness:

> Although some existing members of some schemes have had increases in their pension ages, to reflect increasing longevity, most have not. Cap and share cannot take account of the increases in cost of pensions over recent decades because people have been living longer. Also, untested, complex cap and share arrangements cannot of themselves, address the underlying issue of structural reforms, nor significantly reduce current costs to taxpayers.[27]

Interim report

Lord Hutton was asked to produce two reports – an interim report considering the case for delivering savings on public service pensions within the spending review period (2011-12 to 2014-15) – and a final report, on longer-term structural reforms.[28]

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24 HM Treasury, Budget 2010, HC 61, June 2010, para 1.106
25 Ibid, para 1.42
26 Independent Public Service Pensions Commission: Interim Report, 7 October 2010, p44
27 Ibid, p39
28 Ibid, p133-4; HM Treasury press release, 8 June 2010, Spending review 2010 – the Government's approach

The interim report, published in October 2010, recommended that "the most effective way to make short-term savings is to increase member contributions and there is also a clear rationale for doing so." The rationale for this was "increased longevity, the imbalance between employer and employee contributions and the fact that total contributions may be too low if the discount rate is too high suggests there is a case to make short-term changes, pending long-term reform." The Commission recommended that "any increases should be managed to protect the low paid and, if possible, increases in contributions should be staged and need to be considered with a view to preventing a significant increase in opt out rates."[29]

In response to the Commission's interim report, the Government said it would implement increases in member contributions by 3.2 percentage points by 2014/15.[30] This is discussed in more detail in section 4.3 below.

Final report

In its final report, published in March 2011, the Commission made recommendations for longer-term structural reform of public service pensions:

> The main recommendation of the report is that existing final salary public service pension schemes should be replaced by new schemes, where an employee's pension entitlement is still linked to their salary (a "defined benefit scheme") but is related to their career average earnings, with appropriate adjustments in earlier years so that benefits maintain their value.
>
> The report suggests that it should be possible to introduce these new schemes before the end of this Parliament, in 2015, while allowing a longer transition, where needed, for groups such as the armed forces and police.
>
> Other key recommendations in the report include:
>
> - Linking Normal Pension Age (NPA) in most public service pension schemes to the State Pension Age;
> - Introducing a Normal Pension Age of 60 for those members of the uniformed services – armed forces, police and firefighters – who currently have a NPA of less than 60;
> - Setting a clear cost ceiling for public service pension schemes – the proportion of pensionable pay that taxpayers will contribute to employees' pensions – with automatic stabilisers to keep future costs under more effective control;
> - Honouring, in full, the pension promises that have been earned by scheme members (their "accrued rights") and maintaining the final salary link for past service for current members […] [31]

[29] Independent Public Service Pensions Commission: Interim Report, 7 October 2010, EX 26-9

[30] HC Deb, 24 May 2011, c589-90W. This is discussed in more detail in SN 5768 Public service pension reform – 2010 onwards

[31] Independent Public Service Pensions Commission press release, 10 March 2011, Lord Hutton publishes his final report on public service pensions

2.2 Negotiations

In the 2011 Budget, the Government said it accepted the recommendations of the Commission's final report as a basis for consultation and would bring forward proposals in the autumn that were "affordable, sustainable and fair to both the public sector workforce and the taxpayer."[32]

On 19 July 2011, Chief Secretary to the Treasury, Danny Alexander said a series of meetings with the TUC had established a basis for agreement in several areas, but that differences remained on some of the key recommendations. Scheme level discussions would be established. Consultations on contribution increases for 2012/13 would be completed by October in order to ensure implementation by April 2012. There would also be consultation on contribution increases for 2014/15 and initial proposals for reformed schemes.[33]

The National Union of Teachers (NUT), University and College Union (UCU) and Association of Teachers and Lecturers (ATL) responded that:

> Unfortunately there appears to be a real danger that the government may impose an arbitrary and unfair ceiling on what they are prepared to spend to support teachers' pensions. In our view, without real negotiations on this key issue, these talks will be a sham - the only issue to be decided being how much more teachers will pay, and how much longer they will have to work to secure inferior benefits.[34]

On 2 November 2011, the Chief Secretary to the Treasury announced a new offer to the unions, including:

- **A more generous accrual rate**. In October it had proposed "cost ceilings based on Lord Hutton's recommendations that generate an accruals rate of 1/65th for the new schemes." It was now proposing a cost ceiling of 1/60th of average salary accruing for each year worked. This represented an 8% improvement in the Government's offer.
- **Transitional protection.** Scheme negotiations would be given the flexibility outside the cost ceiling, to ensure that anyone with 10 years or less to their pension age on 1 April 2012 would see no change in when they retire, nor any decrease in the amount of pension they receive at their current normal pension age.[35]

He said reform along the lines proposed could endure for 25 years or longer.[36] The offer was conditional on agreement being reached - "an agreement by the end of the year on the heads of terms on a scheme-by-scheme basis."[37]

The Government set out the key features of its preferred design for the new schemes for teachers, NHS, civil service and local government. They included:

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32 HM Treasury, Budget 2011, para 1.132
33 HC Deb, 19 July 2011, c91-4
34 Joint statement from ATL, NUT and UCU 19 July 2011
35 HC Deb, 2 November 2011,c928
36 HC Deb, 2 November 2011,c930
37 Ibid, c928 and c935

- a Career Average Revalued Earnings (CARE) pension scheme;
- Public service workers benefits to be earned at a rate of 1/60ths of pensionable earnings each year;
- Public service workers will have their benefits increased each year they are working in the public services in line with earnings revaluation;
- a Normal Pension Age linked to State Pension Age (or 65, whichever is higher);
- pensions in payment to increase in line with the Consumer Prices Index (CPI);
- benefits earned by leavers to increase by CPI from the date of leaving until retirement;
- average member contributions for the unfunded public service pension schemes set at the level of the existing schemes after the increase of 3.2 percentage points currently planned.[38]

However, because the Government recognised that different designs might suit different workforces, it set cost ceilings (expressed as a proportion of pensionable pay) within which alternatives could be considered. For the Teachers' scheme, it proposed a gross cost ceiling of 21.7%, with contributions of 12.1% from employers and 9.6% from employees.[39]

The NUT expressed concern that the reforms would mean teachers "paying more, working longer and getting less due to career averaging and CPI pensions indexation."[40]

On 9 November 2011, members of the National Association of Head Teachers (NAHT) voted to take strike action, for the first time in the union's 114-year history:

> More than 53.6 per cent per cent of union's membership took part in the ballot with a massive 75.8 per cent of them voting 'yes' – testimony to the intensity of feeling over an issue which many school leaders see primarily as a threat to staff recruitment and retention and ultimately, therefore, as a threat to educational standards for the nation's children.[41]

Teaching unions including the NUT, NASUWT, NAHT, the ATL and UCU took part in industrial action on 30 November 2011.[42]

Heads of agreement

On 20 December, the Chief Secretary to the Treasury confirmed that changes already announced – the switch to the CPI and the contribution increases for 2012 - would go ahead. In addition, "Heads of Agreement" had been established, which he said meant the offer made

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38 HM Treasury, Public Service Pensions: good pensions that last, Cm 8214, November 2011
39 Ibid, Table 3.A
40 NUT, the Government's new pensions offer, 2 November 2011
41 NAHT press release, Countdown to prevent industrial action as school leaders vote to strike over pension cuts, 9 November 2011
42 The Guardian datablog, see which unions voted for 30 November industrial action

in November had been "secured". In the new schemes, individuals would have their normal pension age aligned with their State Pension age. There would be transitional protection for those closest to retirement:

> Those within 10 years of their normal pension age on 1 April 2012 would retain their existing entitlements, i.e: they would remain in their current existing scheme until they draw benefits or are entitled to do so. Those within 13.5 and 10 years would remain in the current scheme on a tapered basis.[43]

A key change from the November proposals was the accrual rate:

> In education, we have agreed to a revised revaluation factor of CPI plus 1.6%, allowing for the accrual rate to be improved to 1/57th, along with modest improvements to early retirement factors.[...] All those heads of agreement are within the cost ceiling that I set out in November, but in a configuration preferred by the unions.[44]

The Government also agreed to retain the "fair deal policy":

> In the course of the talks, unions have stressed the importance of ensuring that their members will continue to be able to receive the benefits of their scheme if it is outsourced. That is the purpose of the fair deal policy, the future of which we have been consulting on. Because we have agreed to establish new schemes on a career average basis, I can tell the House that we have agreed to retain the fair deal provision and extend access for transferring staff. The new pensions will be substantially more affordable to alternative providers, and it is right that we offer workers continued access to them.[45]

There would be no further change for 25 years:

> I have made the commitment that these reforms will be sustained for at least 25 years. The Government intend to include provisions on the face of the forthcoming public service pensions Bill to ensure that a high bar is set for future Governments to change the design of the schemes.[46]

Further details were in a Written Statement:

> *The Secretary of State for Education (Michael Gove)*: On 2 November the Chief Secretary to the Treasury made a statement to the House setting out an improved offer on public service pensions to public sector workers (Cm 8214). This offer provided a more generous cost ceiling for scheme-specific discussions to work within, and protected all those within 10 years of their pension age from any further change. This generous offer was conditional on the Government and trade unions reaching agreement by the end of the year, including in the teachers' pension scheme, bringing to a conclusion talks that have lasted since February 2011.
>
> Since 2 November I have been engaged in detailed and intensive talks with the teacher and lecturer trade unions and employer representatives. I can now report to the House on the heads of agreement on the scheme design for the teachers' pension scheme to be introduced in 2015, on which talks have concluded.

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43 HC Deb, 20 December 2011, c1201-03; HC Deb, 20 Dec 2011, c160-1WS
44 HC Deb, 20 December 2011, c1201-03
45 Ibid
46 Ibid

The Government have made it clear this sets out their final position on the main elements of scheme design, which unions have agreed to take to their Executives as the outcome of negotiations on the main elements of scheme design. This includes a commitment to seek Executives' agreement to the suspension of any industrial action on pension reform while the final details are being resolved. Further detailed work will take place in the new year and Executives will consult members as appropriate.

The agreement includes changes to the Government's reference scheme to reflect the priorities of the teaching profession in relation to early retirement and other issues, consistent with the need to remain within the Government's overall cost ceiling.

The agreement reached allows for further discussions on variations to the balance between the accrual rate and the career average revalued earnings revaluation factor within the limits of the Government's cost ceiling.

The core parameters of the new scheme are set out below:

a. a pension scheme design based on career average;

b. a provisional accrual rate of 1/57th of pensionable earnings each year, and the resolution of outstanding issues not covered by this agreement.

c. revaluation of active members' benefits in line with CPI + 1.6%.

d. normal pension age equal to state pension age, which applies both to active members and deferred members (new scheme service only);

e. pensions in payment to increase in line with prices index (currently CPI);

f. benefits earned in deferment to increase in line with CPI;

g. average member contributions of 9.6%, with some protection for the lowest paid;

h. optional lump sum commutation at a rate of 12:1, in accordance with HMRC limits and regulations;

i. spouses/partner pension in accordance with current provisions;

j. lump sum on death in service of three times FTE salary;

k. ill-health benefits the same as those in the current open scheme;

l. actuarially fair early/late retirement factors on a cost-neutral basis except for those with a NPA above age 65, who will have early retirement factors of 3% per year for a maximum of three years in respect of the period from age 65 to their NPA; and

m. an employer cost cap to provide backstop protection to the taxpayer against unforeseen costs and risks.

The Government Actuary's Department has confirmed that this scheme design does not exceed the cost ceiling set by the Government on 2 November. Copies of the heads of agreement and GAD verification have been deposited in the Libraries of both Houses.[47]

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[47] HC Deb, 20 December 2011, c157-8WS; See also Heads of agreement and GAD's verification of the proposals is here.

Proposed Final Agreement

On 9 March 2012, the Government published Proposed Final Agreements for the Teachers, NHS and Civil Service schemes. It said these delivered its "key objectives on linking Normal Pension Age to State Pension age and moving to schemes based on career average salary, while protecting those closest to retirement." The cost ceilings set on 2 November 2011 remained unchanged, with no additional money made available.[48] Detailed proposals for the Teachers' Pension Scheme were announced on 9 March 2012. The final scheme design was "conditional on acceptance of this proposed final agreement":

> *The Minister of State, Department for Education (Mr Nick Gibb):* On 20 December the Secretary of State for Education reported to the House on the heads of agreement on the teachers' pension scheme to be introduced in 2015, which set out the Government's final position on the main elements of scheme design. Since 20 December, Ministers have been engaged in detailed discussions with the teacher and lecturer unions over the remaining details of the teachers' pension scheme. I can now report to the House that discussions on these final details of the scheme design for the teachers' pension scheme to be introduced in 2015 have now concluded. The Government have made it clear this sets out our final position on scheme design, which unions agreed to take to their Executives as the outcome of negotiations. This includes a commitment to seek Executives' agreement to the cessation of any industrial action on pension reform. The final scheme design outlined is conditional on acceptance of this proposed final agreement.
>
> This proposed final agreement reflects the conclusion of discussions on the final details with teacher and lecturer unions since the Secretary of State made his written ministerial statement on pension reform, on 20 December 2011, *Official Report*, column 157WS. The headline elements of the proposed final agreement remain unchanged from those reached on 20 December.
>
> The core parameters of the new scheme are set out below:
>
> a. a pension scheme design based on career average;
>
> b. an accrual rate of 1/57th of pensionable earnings each year;
>
> c. revaluation of active members' benefits in line with CPI + 1.6%;
>
> d. normal pension age equal to state pension age, which applies both to active members and deferred members (new scheme service only). If a member's SPA rises, then NPA will do so too for all post-2015 service;
>
> e. pensions in payment to increase in line with prices index (currently CPI);
>
> f. benefits earned in deferment to increase in line with CPI;
>
> g. average member contributions of 9.6%, with some protection for the lowest paid (subject to the detailed arrangements for determining future contribution structure, as shown in annex A of the proposed final agreement);

48 HM Treasury press release, Discussions conclude on public service pensions details, 9 March 2012

> h. optional lump sum commutation at a rate of 12:1, in accordance with HMRC limits and regulations;
>
> i. spouses/partner pension in accordance with current provisions;
>
> j. lump sum on death in service of three times FTE salary;
>
> k. ill-health benefits the same as those in the current open scheme;
>
> l. actuarially fair early/late retirement factors on a cost-neutral basis except for those with a NPA above age 65 who will have early retirement factors of 3% per year for a maximum of three years in respect of the period from age 65 to their NPA;
>
> m. an employer cost cap to provide backstop protection to the taxpayer against unforeseen costs and risks (as set out at paragraph 5 and annex B of the proposed final agreement);
>
> n. the public sector transfer club will continue, and consideration will be given to the best method of operation in the reformed schemes;
>
> o. phased retirement arrangements which reflect those in the current scheme, with the additional option of a third drawdown of benefits after a member's 60th birthday;
>
> p. abatement will not apply to service in the reformed TPS. Abatement rules for the current scheme will remain unchanged;
>
> q. members who leave the scheme and return within five years will have their accrued service in the current (NPA 60/65) scheme linked to their final salary at retirement; and
>
> r. flexibilities to allow members to elect to pay a higher contribution rate in return for a higher accrual rate for a particular year, at full member cost, within existing limits on additional pension.
>
> s. members who in the new scheme have a normal pension age higher than 65 will have an option in the new scheme to pay additional contributions to reduce or, in some cases, remove any early retirement reduction that would apply, if they retire before their normal pension age. Only reductions that would apply in respect of years after age 65 can be bought out and the maximum reduction that can be bought out is for three years (that would apply to a member with a normal pension age of 68 or higher).
>
> The Government Actuary's Department has confirmed that this scheme design does not exceed the cost ceiling set by the Government on 2 November. Copies of the proposed final agreement and GAD verification have been deposited in the Libraries of both Houses.[49]

The detailed agreement is on the Gov.UK website: Teachers' Pension Scheme – Proposed Final Agreement.

The Pensions Policy Institute looked at the impact of the Governments reforms including:

- The increased member contributions which will increase by an average 3.2% for each scheme (except the Local Government Pension Scheme);

[49] HC Deb, 12 March 2012, c4-5WS

- The switch to a Career Average Revalued Earnings (CARE) scheme;
- The linking of the Normal Pension Age with the State Pension Age for the four largest schemes.

It assumed in its baseline that all public service pensions in payment were uprated in line with changes in the Consumer Prices Index (CPI). Its analysis suggested that the reforms reduced the average value of the benefit offered across all members of the teachers' pension schemes by more than a third: from 23% of a member's salary to 14%. The impact on individual members will vary, depending on factors such as their age and salary progression. The reforms will also reduce government expenditure on public service pensions.[50]

2.3 *Public Service Pensions Act 2013*

The *Public Service Pensions Act 2013*, which received Royal Assent on 25 April 2013, provides the framework for the reform of public service pension schemes from 2015 (2014 for local government). Key features of the Act are to:

- Enable the creation of new public service schemes, providing pensions based on career average rather than final salary;
- Link the normal pension age to the State Pension age (except in the schemes for the firefighters, police and armed forces, which would have a normal pension age of 60);
- Provide transitional protection for those 'closest to retirement';
- Introduce an "employer cost cap", to manage changes in cost should they breach a limit;
- Introduce new requirements for the management, regulation and administration of schemes;
- Introduce new common procedures for changing scheme rules in future, with enhanced requirements for certain changes made within 25 years of 2015, and for retrospective changes expected to have 'significant adverse affects' for scheme members;
- Extend access to public service schemes, to allow public service workers whose employment is compulsorily transferred to a new employer to retain membership of a public service scheme; and
- Add the new schemes to the list covered by the *Pensions Increase Act 1971,* so that same the arrangements apply for increasing pensions in payment in the new schemes as apply to the existing schemes (i.e. annual increases in line with the CPI).

The background and debates on the legislation are discussed in more detail in: Library Research Paper RP 12/57 Public Service Pensions Bill (October 2012), RP 12/70 Public Service Pensions Bill – Committee Stage Report (November 2012) and SN 6572 Public Service Pensions Bill – Lords' Stages (April 2013).

50 PPI, The implications of the Coalition Government's reforms for members of the public service pension schemes, October 2012

Consultation on implementation

In May 2013, the Government published its consultation on proposals for implementation of the reformed Teachers' Pension Scheme in 2015. The response of the main teaching unions can be found on their websites. For example: NUT; ATL.

The Government published its response to the consultation on 13 September 2013. At the same time, it published draft regulations for consultation.[51] Regulations to introduce a new scheme for Teachers in England and Wales were laid before Parliament on 7 March 2014 – *The Teachers' Pension Scheme Regulations 2014 (SI 2014/512).*

Response of the trade unions

In January 2012, it was announced that the ATL and Association of School and College Leaders had accepted the Government's announcement for proposed reform of the Teachers' Pension Scheme in England and Wales. The *Guardian* reported that:

> The Association of Teachers and Lecturers (ATL), which represents 160,000 teachers, said the results of the poll showed that 91.6% of respondents had voted in favour. A second union, the Association of School and College Leaders (ASCL), announced it had accepted the outline "heads of agreement" after a survey of its members showed three-quarters were in favour of signing up, despite "huge anger" over the reforms. The association, which represents 16,000 secondary school and college leaders, said the agreement was not a final deal as a number of "significant" areas still had to be discussed. The ATL president, Alice Robinson, said: "ATL members are realists. They recognise how tough times are and that the government is determined not to give any further ground. Although the government's final offer does not give us everything we wanted, it is the best deal we could get in the current economic climate, and members do not want a significantly worse deal imposed on them if they rejected this one." [52]

In March 2012, the National Association of Head Teachers said it had "no further plans for action".[53]

However, the NUT, NASUWT, UCU and UCAC said they would campaign for further changes.[54] The NUT said:

> The Government says that negotiations are now at an end and it intends to impose a settlement. The NUT has been fully involved in those negotiations alongside other unions. The aim of our campaign remains to settle matters through negotiation. As a result of our strike action on 30 June and 30 November, the Government offered concessions. While these were welcome, they are not nearly enough. The Government is still asking teachers to pay a lot more and work a lot longer to get a lot less:

51 Draft Teachers' Pension Scheme Regulations 2014
52 'Teaching unions accept pensions deal', The Guardian January 2012
53 NAHT comments on government announcement that pensions talks have concluded
54 NASUWT, Pensions Latest, May 2012; NUT Pensions Campaign, Strike Action in London - 28 March, Key Facts for NUT Members; UCU press release 27 April 2012, 'UCU will join strike action and protests on 10 May'; UCAC website, Your pension under threat

- All teachers will still pay 50 per cent more on average for their pensions;
- All teachers more than 10 years from their current pension age on 1 April 2012 will have to work longer for a full pension – for many, up to 68 or even more;
- The move to the Consumer Prices Index (CPI) indexation will cut all teachers' pensions and the move to career average will affect almost everyone not given protection.
- The Government has no justification for its proposals. It has not carried out the valuation of the Teachers' Pension Scheme, required by law, which would demonstrate the actual costs of our pensions. With no negotiation whatsoever, it implemented its changes in pension indexation from April last year, so that retired teachers have already lost out.[55]

In March 2013, the NUT and NASUWT wrote to the Education Secretary announcing an escalation of their joint action over pay, pensions and working conditions. They set out actions that could be taken to avert this, including publication of the "the valuation of the Teachers' Pension Scheme conducted on the basis of the 2010 criteria and factors and commit to genuine discussions on its findings."[56]

On 5 September 2013, the NUT and NASUWT announced the next phased of a joint campaign of industrial action over "adverse changes teachers' pay, pensions, working conditions and jobs".[57] NUT members in England and Wales took part in strike action on pay, pensions and conditions on 26 March 2014.[58] The NUT's position on pensions is summarised on its website.[59]

2.4 Negotiations in Scotland

Separate discussions were held between the Scottish Government and teaching unions. In March 2012, the Education Institute of Scotland said it would enter "formal discussions with the Scottish Government and local authorities regarding the future design of the Scottish Teachers Superannuation Scheme."[60] In March 2013, it said its members had given "overwhelming support to the prospect of further industrial action to defend their pensions", should talks with the Scottish Government fail to reach agreement.[61] In October 2013, it said that negotiations around a "soft landing", in the form of lower rates of

55 NUT Pensions Campaign, Strike Action in London - 28 March, Key Facts for NUT Members
56 NUT and NASUWT – letter to Michael Gove, 18 March 2013
57 NASUWT AND NUT CONFIRM NEXT PHASE OF INDUSTRIAL ACTION - press release 5 September 2013
58 BBC News, National teachers' strike: Schools shut across Wales
59 NUT, Teachers' Pensions; See also NASUWT Teachers' Pensions Latest
60 EIS, Strike action suspended – EIS to enter pensions discussions with Scottish Government; For more on public service pensions in Scotland, see Library Standard Note SN 05768 Public service pension reform – 2010 onwards
61 IES Members give overwhelming support to further pensions action, March 2013

actuarial reduction for teachers retiring between 65 and State Pension age, had effectively been vetoed by the UK Treasury.[62]

Details of the Scottish Governments reforms, including a Framework Document setting out the features of the new scheme and consultation on draft regulations are on the 2015 Pension Reforms Archive on the SPPA website.

The Education Institute of Scotland (EIS) – which describes itself as the largest teaching union in Scotland – regretted the fact that the new scheme was almost identical to that for teachers in England and Wales:

> During negotiations through the Scottish Teachers' Pension Scheme Negotiating Group on new scheme arrangements, the EIS sought to minimise the actuarial impact on those who were being forced to work beyond 65 to the state pension age but who would choose to retire early. Regrettably, HM Treasury declined these proposals. Therefore, the Scheme adopted in Scotland, the Scottish Teachers' Pension Scheme 2015 (STPS 2015), is almost identical to the new Teachers' Pension Scheme which shall operate in England and Wales from that date.[63]

2.5 Debate on the issues

The basis for reform

One of the main arguments of the unions was that mechanisms have already been agreed which will keep the TPS viable and sustainable in the long term. In April 2011, the ATL said:

> In 2007 changes to the TPS were agreed precisely to deal with increased life expectancy and to keep the scheme viable in the long term. There has been no new evidence to suggest further change is necessary.[64]

It argued that the Government should give the "cap and share arrangements time to work" and that the regular actuarial valuations (at which cap and share would come into play) are the correct means for assessing the financial health of the scheme.[65] Similarly, the NUT said:

> The NUT's agreement with the Government in 2006 made changes to the Teachers' Pension Scheme that made it sustainable for the long term. The House of Commons Select Committee and the National Audit Office have both confirmed that the cost of public sector pension schemes will fall as planned. Lord Hutton's final report says that public sector pensions if unchanged from now would fall from 1.9 per cent of GDP now to 1.4 per cent of GDP in 2060. This agreement made provision for teachers to pay more for their pensions, or for other changes to be made if the valuation requires it. This shows the willingness of teachers to accept their share of any increasing costs – but the Government wants to abandon that agreement and impose changes without any informed basis from a valuation and, for the move from RPI to CPI, without any negotiations at all.[66]

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62 EIS Update on Pensions – October 2013
63 EIS Scottish Teachers' Pension Scheme 2015
64 ATL Pensions Update, April 2011
65 ATL, policy on pensions (downloaded June 2011).
66 NUT press release, NUT to strike on 30 June 2011, 15 June 2011

In support of their case, both unions referred to the study of the National Audit Office, which said that:

> As a result of the changes, which are on course to deliver substantial savings, long-term costs are projected to stabilise around their current levels as a proportion of GDP. The changes are also set to manage one of the most significant risks to those costs, by transferring from taxpayers to employees additional costs arising if pensioners live longer than is currently projected.[67]

The Independent Public Service Pensions Commission found that expenditure on unfunded public service pension schemes as a proportion of GDP was projected to fall in the longer-term.[68] However, it did not think that public service pensions were yet on a "fair and sustainable footing."[69]

In his speech to the Local Government Association on 28 June, the then Prime Minister, David Cameron, said he thought the balance between what public sector employees pay in to their pensions and what the taxpayer contributes was "getting massively out of kilter" and that "we need to rebalance the system."[70]

In June 2013, the NUT and NASUWT said that the statistical findings of the Independent Public Service Pensions Commission, the National Audit Office and the Pensions Policy Institute, "completely refute the case for further reform of public service pensions." It remained their clear view that "the proposed changes to the teachers' pension schemes are unjustified."[71]

Actuarial valuation

Connected to the above, teaching unions have called for the Government to produce the triennial valuation of the scheme as this would show what was happening to the costs of the scheme. Furthermore, the actuarial valuation was fundamental to the cap and share arrangements (in that, increases in cost pressures identified at a valuation are shared between employees and employers, up to the value of the agreed cap).[72]

The *Teachers' Pensions Regulations* 1997 required an actuarial valuation of the scheme to be carried out by the Government Actuary's Department (GAD) every four years.[73] The last published actuarial review as at 31 March 2004 by the Government Actuary's Department was published in November 2006. The next valuation was due to show the

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67 NAO, The impact of the 2007-08 changes to public sector pensions, HC 662, 8 December 2010, p19

68 Independent Public Service Pensions Commission: Interim Report, 7 October 2010, p64; See also, Chart 1E in the final report

69 Independent Public Service Pensions Commission: Interim Report, 7 October 2010, foreword and p39

70 David Cameron – speech at the Local Government Association – 28 June 2011

71 NASUWT and NUT, Response to proposals for implementation of the reformed Teachers Pension Scheme in 2015, June 2013

72 Independent Public Service Pensions Commission: Interim Report, 7 October 2010, p45

73 Teachers' Pension Regulations 1997 *(SI 1997 No. 3001)*, regulation G4 and, from September 2010, Teachers' Pensions Regulations 2010 (SI 2010/990), regulation 128

position of the scheme as at 31 March 2008.[74] However, along with other scheme valuations, it was put on hold pending a consultation on the discount rate used to set unfunded pension contributions in December 2010, the results of which were announced in the March 2011 Budget.[75]

On 2 November 2011, the Chief Secretary to the Treasury said that it would be best to wait until a new scheme was in place before carrying the work forwards.[76]

New regulations introduced in 2010 require an actuarial review of the position of the scheme as at 31 March 2012 and then every four years after that.[77] The Government announced in July 2011 that it had decided to replace cap and share with increases in employee contributions.[78]

In January 2013, the Government announced that it had decided that there was no need to carry out the suspended actuarial review. It would instead focus its resources on the valuation that would be needed for the new scheme.[79]

The NUT and NASUWT continued to argue that the valuation of the scheme as at end March 2008 should be published in order to "establish the true financial position of the TPS."[80]

In March 2015, the Government has said result of the valuation showed that employer contribution rates would need to increase from 2015:

> The final results for the NHS, teachers and civil service schemes will be published later in the spring. But it is already clear that these will show the level of contributions paid by employers have not been sufficient to meet the full long-term costs of these schemes. If current rates were allowed to continue the shortfall would be nearly £1 billion a year across the teachers, civil service and NHS schemes. The Government are therefore taking corrective action, and will introduce new higher employer contribution rates for these schemes from 2015. This will ensure that the contributions paid by public service employers reflect the full costs of the schemes, including the costs of the deficits that have arisen since previous valuations.[81]

The actuarial valuation of the scheme as at 31 March 2012 was published in June 2014. It specified the rate of employer contribution

[74] GAD, 'The Teachers' Pension Scheme (England and Wales) Actuarial Review as at 31 March 2004. Report by the Government Actuary', November 2006
[75] HM Treasury, Budget 2011, March 2011; See also HC Deb, 18 July 2011, c562
[76] HC Deb, 2 November 2011, c937; See also HC Deb, 15 March 2012, c436W
[77] Teachers' Pensions Regulations 2010 (SI 2010/990), reg 128
[78] Letter from CST to TUC General Secretary, 18 July 2011
[79] DfE Consultation on proposed increases in contributions for members of the Teachers' Pension Scheme (TPS) in 2013/14; and the removal of provisions governing scheme valuations and cap and share arrangements. Government response, January 2013, para 18-21; DfE, Consultation on Proposed Increases to Contributions for Members of the Teachers' Pension Scheme and the Removal of Regulations Governing Scheme Valuations, 26 October 2012
[80] NASUWT and NUT, DfE Consultation – Proposals for implementation of the reformed Teachers' Pension Scheme in 2015, June 2013
[81] HC Deb 13 March 2014 c31-2WS

payable for the four year period from 1 April 2015 (to be implemented from 1 September 2015) and the employer cost cap:

> 1.3 The key results of the valuation are as follows:
>
> - **Employer contribution rate** payable for the implementation period: 16.4% of pensionable pay
>
> - **Employer cost cap**: 10.9% of pensionable pay
>
> - Total Scheme liabilities for service to the effective date of £191.5bn and notional assets of £176.6bn, giving a notional past service deficit of £15.0bn.[82]

The report explained the difference between the employer contribution rate and the employer cost cap as follows:

> 3.9 To calculate the employer contribution rate, we have placed a net present value on the extra annual benefit accrual over the four-year implementation period [April 2015-2019] and then adjusted for the repayment of the deficit over 15 years and member contributions. The employer cost cap is similar to the employer contribution rate but is based on all members being in the 2015 Scheme in April 2015, with assumptions reflecting members' likely behaviour had they never been members of the existing schemes, and no deficit contributions apply.[83]

An FAQ on the Teachers' Pension Scheme website explains:

> **When is the next time employer contributions will change?**
>
> The next revision to the employer rate is not expected to take effect until 1 April 2019. This will follow on from the next valuation which is due on 31 March 2016, which will also determine the opening balance of the cost cap fund and provide an analysis of the cost cap. […]
>
> **When do you expect the rate to fall to the level of the cost cap?**
>
> When all active members are in the reformed scheme, the cost of future accrual is expected to be close to the cost cap. However, the employer contribution rate also includes allowance for costs relating to past service (including those within the final salary arrangements) so may well still differ significantly from the cost cap. [84]

Member contribution increases

As explained above, the Commission's interim report said that:

> There is also a strong case for looking at some increase in pension contributions for public service employees, to better meet the real costs of providing these pensions, the value of which has risen in recent years with most of these extra costs falling to taxpayers.[85]

In response, the Government said it would implement increases in member contributions:

> Spending review 2010 announced progressive changes to the level of employee contributions to public service pensions that

82 GAD, Teachers' Pension Scheme. Actuarial valuation as at 31 March 2012. Report by the Scheme Actuary, 9 June 2014
83 Ibid
84 Teachers' Pensions, Valuation – Frequently asked questions, June 2014
85 Independent Public Service Pensions Commission: Interim Report, 7 Oct 2010, p4

> lead to savings of £2.8 billion a year from the unfunded pension schemes by 2014-15, to be phased-in from 2012-13, excluding the armed forces. This is equivalent to 3.2 percentage point increase on average. No decisions have been taken on individual schemes—this is subject of discussions with trade unions and other work force representatives.[86]

The policy would be phased-in and designed to protect the low paid and with a view to mitigating a possible increase in opt-out rates. It was expected to lead to savings of £2.8 billion a year by 2014-15, to be phased in from April 2012.[87]

On 17 June 2011, Chief Secretary to the Treasury, Danny Alexander, set out the case for contribution increases, as follows:

> And the costs have already risen dramatically...total payments to public service pensioners and their dependents were almost £32bn in 2008-9, an increase of a third in real terms over the last decade. But whilst it is the individual public service employee that reaps the benefits of receiving a pension for longer... as things stand, it is not the employee that's paying extra for it. In fact, personal contributions compared to taxpayer contributions have gone down. For instance, when the Teacher's Pension Scheme began, employee and taxpayer contributions were equal at 5%. Today however, current members pay around 6% with taxpayers contributing more than double that at 14%.[88]

He gave more detail about how the Government proposed to protect the lower paid and phase-in the increase:

> Our proposal would not increase contributions at all for those earning less than £15,000 a year, and we propose a limit of 1.5 percentage points increase for those earning up to £18,000. This would be progressive and fair. It would help to ensure that the increase in contributions will not cause people to opt out. [...]
>
> Furthermore, we have been clear that for all income brackets where there is an increase in contributions, this increase would be phased in over 3 years. Our proposals would mean that in 2012, 40% of the increase will apply... approximately the same amount that had already been agreed between the Unions and the previous Government through the 'cap and share' arrangement. In 2013, 80% of the increase will apply, and 100% in 2014.[89]

On 19 July 2011, the Chief Secretary to the Treasury announced scheme-specific consultation on the contribution increases. Consultations in the unfunded schemes to deliver savings of £1.2 billion in 2012/13 would start in July 2011 and be completed by the end of October, in order to ensure implementation by April 2012. This would replace 'cap and share' (see above), which would be suspended.[90]

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86 HC Deb, 24 May 2011, c589-90W. This is discussed in more detail in SN 5768 Public service pension reform – 2010 onwards

87 HL Deb, 7 February 2011, cWA31 (i.e, savings of £1.8bn in addition to the £1bn already expected through cap and share mechanisms. The figure does not included expected savings from theLGPS. see para 1.16 Independent Public Service Pensions Commission: final report, March 2011

88 Danny Alexander, Speech to IPPR, 17 June 2011

89 Ibid

90 Letter from the Chief Secretary to the Treasury to TUC General Secretary, Brendan Barber, 18 July 2011. 'Cap and share' arrangements were part of the 2007-08 reforms to public service pensions. Under cap and share, increases in cost pressures identified at scheme valuations would be shared between employees and employers,

Scheme specific discussions would also be required make proposals by the end of October 2011 on how to achieve the savings required in 2013-14 and 2014-15.[91]

On 28 July, the Government consultation on pension contribution increases for civil servants, teachers and NHS staff for 2012/13. That relating to the teachers' scheme is here.[92]

The teaching unions argued that the case for contribution increases, should be made on the basis of scheme valuations. The ATL, for example, said:

> Should a valuation show the Teachers' Pension Scheme is unhealthy, ATL would make sure that the scheme and the future of our members are protected. In fact, ATL agreed to increased contributions after the last valuation in 2006. However, the government has chosen not to value the scheme, despite a valuation being due in 2010. It's clear that the proposed contribution increases are simply a way of raising money from teachers and lecturers to go to the Treasury, not towards pensions. We don't think this tax on teachers is fair and our members have already demonstrated their strength of opposition by striking on 30 June. ATL is willing to join talks with the government over the Teachers' Pension Scheme, but little will be achieved unless the government starts an honest debate about the health of the pension scheme.[93]

In December, the Government issued its response to the consultation on contribution increases. In the case of the Teachers' Scheme, the Government decided to implement the increases as proposed in July.[94] The first stage of contribution increases were introduced in April 2012.[95] In evidence to the Public Bill Committee on 6 November 2012, Kevin Courtney of the NUT said there was a "problem with selling participation in a pension scheme," given the contributions required and the fact that the pension age was linked to the State Pension age, which was rising.[96]

The Department for Education (DfE) published its response to the consultation on the second stage of contribution increases in January 2013. It said that, to date there had been "no discernable increase in opt-out rates". However, it had decided that greater protection should be given to some groups, by capping the contribution rate for those earning under £26,000 and introducing an additional tier between £40,000 and £75,000.[97] The increases for 2013/14 were implemented

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up to the value of a cap on employer contributions. Above the cap, increases in cost would be met by employees, either by changing employee contributions or by altering benefits.

91 HC Deb, 19 July 2011, c91-4

92 HM Treasury press release, 'Government consultation on proposed pension contribution changes for civil servants, NHS workers and teachers, 28 July 2011'

93 ATL press release, Raising pension contributions is not to protect teachers in retirement, it's to fill the Treasury's coffers, says ATL, 28 July 2011

94 Department for Education, Consultation on proposed increases to contributions for Members of the Teachers' Pension Scheme – consultation response, December 2011

95 HC Deb, 8 March 2012, c70WS

96 PBC Deb, 6 November 2012, c206-6

97 DfE Consultation on proposed increases in contributions for members of the Teachers' Pension Scheme (TPS) in 2013/14; and the removal of provisions governing scheme valuations and cap and share arrangements. Government response, January

by the *Teachers' Pensions (Amendment) Regulations 2013 (SI 2013/275)*.

The Government consulted on contribution increases for 2014 between November 2013 and January 2014.[98] The rates were implemented in the *Teachers' Pension (Amendment) Regulations 2014 (SI 2014/424).*

The NUT and NASUWT continue to oppose the average 3.2% increase in employee contributions prior to 2015, arguing that it "has nothing to do with pension scheme funding. Instead it is a levy on teachers' pay for the costs of the recession."[99]

The Proposed Final Agreement for the new Teachers Pension Scheme to be introduced from 2015 included a proposal for "member contributions on a tiered basis to produce a total yield of 9.6% of total pensionable pay in the Scheme".[100] Section 3 of the *Public Service Pensions Act 2013* provides for contribution rates to be set in regulations.[101] The rates for the 2015 scheme are in *SI 2014/512 (regulation 185)*.

Member contribution rates from 2011 onwards are in the table below.

		Member contribution rate				
Lower salary	**Higher salary**	**2011/12**	**2012/13**	**2013-14**	**2014/15**	**2015 scheme**
	£14,999	6.4%	6.4%	6.4%	6.4%	6.4%
£15,000	£25,999	6.4%	7.0%	7.0%	7.2%	7.2%
£26,000	£31,999	6.4%	7.3%	7.9%	8.3%	8.3%
£32,000	£39,999	6.4%	7.60%	8.8%	9.5%	9.5%
£40,000	£44,999	6.4%	8.0%	9.2%	9.9%	9.9%
£45,000	£74,999	6.4%	8.0%	10.1%	11.0%	11.0%
£75,000	£99,999	6.4%	8.4%	10.6%	11.6%	11.6%
£100,000	£111,999	6.4%	8.4%	11.2%	12.4%	12.4%
£112,000		6.4%	8.8%	11.2%	12.4%	12.4%

Scheme design

Lord Hutton's final report recommended that "a new career average revalued earnings (CARE) scheme should be adopted for general use in the public service schemes." It did not consider final salary schemes provided the "right design for future public service schemes". This was because:

> Final salary schemes unfairly benefit high flyers who can receive up to twice as much in pension payments per £100 of contributions. It exposes taxpayers to salary risk (the risk that

2013; DfE, Consultation on Proposed Increases to Contributions for Members of the Teachers' Pension Scheme and the Removal of Regulations Governing Scheme Valuations, 26 October 2012

98 Gov.UK, New Fair Deal and increases to member contributions

99 NASUWT and NUT, DfE Consultation – Proposals for implementation of the reformed Teachers' Pension Scheme in 2015, June 2013

100 DfE, Teachers' Pension Scheme – Proposed Final Agreement, March 2012

101 Ibid, para 200-216

> higher than expected salary rises increase the cost of providing pensions), which should be borne by the scheme member who benefits from the salary rise. And final salary creates a barrier to employees moving from the public to private sector. These inherent problems of final salary schemes impact on fairness and sustainability and have led the Commission to conclude that an alternative model should be chosen for the future.[102]

Also in line with Lord Hutton's recommendations, the Chief Secretary proposed that for "future pension accruals, the defined benefit will be linked to the average salary over your career and not your final salary".[103] He emphasised that accrued rights would be protected:

> The benefits that you have already secured under the current final salary scheme would be protected. Let me be clear what this means: for what you have accrued, the 'final salary' which is used to calculate that pension would be the one you have when you eventually decide to retire or leave the scheme altogether. And again, for what you have accrued, we would not be changing the age at which you can claim those benefits. You could still draw that part at the retirement age that you were originally expecting to claim it. We will honour, in full, the benefits earned through years of service. No ifs, no buts.[104]

The ATL argued that the proposed shift from final salary to career average would "significantly reduce the benefits of leaders, teachers and support staff in retirement and […] impact the low paid hardest, typically women and part-time employees."[105]

The Government announced the core parameters of its proposed new scheme for teachers on 20 December 2011. It would provide pensions based on career average salary, with a provisional accrual rate of 1/57th of pensionable earnings a year and revaluation of active members' benefits in line with CPI + 1.6%.[106]

Section 8 of the *Public Service Pensions Act 2013* provides for a "broad power to create pension and benefit schemes of different designs", including DB schemes, DC schemes and "schemes of any other description." Any DB scheme must be a CARE scheme, or another type of DB scheme specified in regulations made by the Treasury, but not a final salary scheme.

Normal pension age

Lord Hutton's final report recommended linking the normal pension age for future accruals, for members of most public service schemes, to their State Pension age:

> **Recommendation 11**: The Government should increase the member's Normal Pension Age in the new schemes so that it is in line with their State Pension Age. The link between the State Pension Age and Normal Pension Age should be regularly reviewed, to make sure it is still appropriate, with a preference for keeping the two pension ages linked.

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102 Independent Public Service Pensions Commission: Final Report, 10 March 2011, p10
103 NUT factsheet, *Reasons for NUT action – key facts for NUT members*
104 Ibid
105 ATL, Policy on pensions, 2011
106 HC Deb, 20 December 2011, c157-8WS

> Ex.27 The introduction of the link to the State Pension Age, which will initially move Normal Pension Ages to 65, will move the proportion of adult life in retirement for public service pension scheme members back to about a third: roughly where it was in the 1980s. The current State Pension Age of 65 is already the Normal Pension Age for most new entrants to public service pension schemes. Moving to this for future accrual will more fairly distribute the benefits between scheme members. In the long term, the timetabled increases in State Pension Age should help to keep the proportion of adult life in retirement for members around this level, on current life expectancy projections.[107]

Under current legislation, the State Pension age (SPA) for women is increasing so that it reaches 65 in November 2018. The equalised SPA will then increase to 66 by October 2020. It will then increase to 67 between 2026 and 2028.[108] For the future, there will be periodic reviews of the SPA in the light of changes in life expectancy and other relevant factors. The first such review is to take place by May 2017.[109] This is discussed in more detail in Library Note SN 06546 State Pension age review (May 2017).

On 17 June, Danny Alexander said that, as recommended by Lord Hutton and in response to increasing longevity, the Government was proposing to line the normal pension age in public service pension schemes (other than the armed forces) with the State Pension age. Accrued rights would be protected:

> For those that would change, as I said, we are still protecting those benefits that you have accrued to date under the old scheme. But not only would we protect those amounts, we would protect when you can draw them. As such, you would still have and you could still draw that first part of your pension at the retirement age you were originally expecting.[110]

The ATL said retirement ages in the TPS should reflect the capacity of the employee to do the job as effectively and efficiently as possible and should be maintained at existing levels.[111]

On 2 November, the Government proposed transitional arrangements for people within ten years of their pension age on 1 April 2012. Other people would still have a choice as to when they retire:

> [...] they are not being forced to work to their State Pension Age. Current public service workers can draw the full pension benefits they have earned under their current pension scheme at their current Normal Pension Age. However, they may choose to work longer and earn more pension benefits under the new scheme;[112]

It confirmed details of its offer on 20 December 2011. The normal pension age would be linked to the State Pension age applying to active

107 Independent Public Service Pensions Commission: Final Report, 10 March 2011, Executive summary
108 *Pensions Act 1995*, Sch 4, as amended
109 *Pensions Act 2014, s27*
110 Danny Alexander, Speech to IPPR, 17 June 2011
111 ATL, Position statement: pensions, April 2011, PS037
112 HM Treasury, Public Service Pensions: good pensions that last, Cm 8214, November 2011

and deferred members for new scheme service only. Details of the transitional arrangements were also confirmed:

> 3. In addition, attached at Annex D is a policy costings note outlining arrangements that will ensure teachers who, as of 1 April 2012, have 10 years or less to their current pension age will see no change in when they can retire, nor any decrease in the amount of pension they receive at their current Normal Pension Age. The note sets out a legal assessment of the policy as well as the data, methodology and assumptions used to determine that total cash expenditure in each and every year is no higher for the protected group than it would have been were no reform to take place.
>
> 4. Members who are within a further 3 .5 years of their Normal Pension Age, i.e. up to 13.5 years from their NPA will have limited protection with linear tapering so that for every month of age that they are beyond 10 years of their normal pension age, they lose 2 months of protection. At the end of the protected period, they will be transferred into the new pension arrangements.[113]

Section 10 of the *Public Service Pensions Act 2013* provides for a link between the normal pension age and the State Pension age in the new scheme to be introduced in 2015. An increase in an individual's SPA will affect all benefits earned in the scheme. The Explanatory Notes say:

> 69. *Subsection (4)* requires any changes to normal or deferred pension age that occur as a result of a change in state pension age to apply to the calculation and payment of all benefits earned in a scheme, including benefits accrued before the change in state pension age.[114]

In evidence to the Public Bill Committee, Kevin Courtney of the NUT explained why the provisions on the normal pension age were a particular concern:

> Teachers tell us, when we talk to them in depth, that they think that teaching is a performance art where you cannot have an off-day. If your performance slips on one day it has consequences for the rest of the week, so you have to be on top of your game the whole time; our members tell us that they do not think it is going to work, getting to 68. We had hoped, and even up to the last minute it was on the table in discussions with the Department, suggested by the DFE, that we could have an age on the pension scheme that was SPA minus three, so that the normal pension age for teachers would not go above 65 until the state pension age had gone to 68. It was not without costs, and not without our side paying the costs, but the Department made that suggestion to us, took it to the Treasury, and told us that the Treasury had signed off on it as a way of managing longevity risk. At the very last minute in the negotiations it was swept away, and we have still not received any explanation. That is certainly part of the reason why we have not signed up to the pensions deal.[115]

A further area of concern was that an increase in the SPA would affect all rights accrued in the new scheme.[116] In their response to the

113 HC Deb, 20 December 2011, c157-8WS; See also Heads of agreement

114 Public Service Pensions Act 2013 – Explanatory Notes

115 PBC Deb, 6 November 2012, c201

116 Ibid, c211

consultation on implementation of the 2015 scheme, the NUT and NASUWT said:

> 16. The NASUWT and NUT oppose the provision that normal pension age should equal state pension age in the proposed TPS. We think it is unreasonable to expect teachers to be forced to work into their late 60s for a full pension. It would be completely unacceptable for teachers to be expected to work past their 70th birthday, as is perfectly foreseeable under the proposal for future reviews of the state pension age included in the current Pensions Bill. That proposal means that teachers will not be able to plan for the future with any certainty, as a Government decision to increase the state pension age would have a knock-on effect on all of their post-2015 occupational pension rights as well as their state pension rights.[117]

Fair Deal

> The Fair Deal Policy builds on the requirements under a TUPE transfer for the occupational pension entitlements of these individuals, providing for a higher level of pension provision. It applies where:
>
> - Public sector staff are compulsorily transferred to a new employer; and
> - An outsourced public service where staff are transferred out under the Fair Deal policy in the past is re-tendered or returned to the public sector.[118]

As part of its agreement on reform of public service pension schemes, the Government has said it would "retain the fair deal provision and extend access for transferring staff.[119] In a Written Statement of 4 July 2012, Chief Secretary to the Treasury, Danny Alexander, said this would mean all staff whose employment is compulsorily transferred from the public service under TUPE would retain membership of their current employer's pension arrangement:

> I can also confirm that the Government have reviewed the fair deal policy and agreed to maintain the overall approach, but deliver this by offering access to public service pension schemes for transferring staff. When implemented, this means that all staff whose employment is compulsorily transferred from the public service under TUPE, including subsequent TUPE transfers, to independent providers of public services will retain membership of their current employer's pension arrangements. These arrangements will replace the current broad comparability and bulk transfer approach under fair deal, which will then no longer apply. The Government will bring forward detailed proposals for implementing this in the autumn.[120]

The final agreement for reform of the Teachers' Pension Scheme said:

> 8. On the basis that this scheme design is agreed, the Government agrees to retain Fair Deal provision and extend access to public service pension schemes for transferring staff. This

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[117] NASUWT and NUT, Response to DfE consultation on proposals for implementation of the reformed Teachers' Pension Scheme in 2014, June 2013

[118] HM Treasury, Fair Deal Policy: treatment of pensions on compulsory transfer of staff from the public sector, 3 March 2011

[119] HC Deb, 20 December 2011, c1202-3 [Danny Alexander]

[120] HC Deb, 4 July 2012, c54WS

> means that all staff whose employment is compulsorily transferred from maintained schools (including academies), higher and further education institutions under TUPE, including subsequent TUPE transfers, will still be able to retain membership of the Teachers' Pension Scheme when transferred. These arrangements will replace the current provisions for bulk transfers under Fair Deal, which will no longer apply. The Government's decision on Fair Deal means that, subject to agreement on scheme reform, independent schools which already have access to the Teachers' Pension Scheme will continue to do so (for existing and new teachers); and new teachers and independent schools will continue to be able to join the scheme under the existing qualifying criteria.[121]

In 2013, the Government consulted on whether Higher Education and Further Education institutions should be able to choose whether or not to apply the new Fair Deal when compulsorily transferring staff to another private sector employer. Teaching unions such as the NUT and the NASUWT argued that teachers in these institutions should "continue to have protection on their entitlement to a public service pension."[122] However, the Government decided Fair Deal would not be mandatory in the HE/FE sector. It said:

> 26. The majority of responses were broadly supportive of the proposals to accommodate the New Fair Deal arrangements into the TPS. The areas of concern that were raised are around the extension of the policy to the HE/FE sector and opinions are polarised on this subject depending upon whether the respondent represented employees or employers.
>
> 27. The Department recognises that there are concerns regarding whether New Fair Deal will apply in the HE/FE sector. However, that issue has been the subject of a separate consultation by HMT and HMT's guidance makes clear that these sectors are not required to apply NFD guidance, although they may do so, if they wish. The Department considers that the discussions and consultation that took place to develop this guidance fully explored this.
>
> 28. The position taken by HMT is reflected in the TPS arrangements as these will facilitate those policy decisions. New Fair Deal will not be mandatory in the HE/FE sector but employers will be able to elect to apply the arrangements. HMT have also suggested a review after two year to re-consider the issue against numbers of HE/FE institutions that have elected to participate.[123]

Appropriate arrangements were made to the Teachers Pensions Regulations 2010 to give the proposed changes legal effect on 1 April 2014.[124]

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121 Department for Education, Teachers' Pension Scheme – Proposed Final Agreement, March 2012

122 NASUWT, HM Treasury Consultation on the new Fair Deal policy: Pension protection for staff employed by Higher Education and Further Education institutions who are eligible to be members of the Teachers' Pension Scheme or the Local Government Pension Scheme, 2 August 2013

123 DfE, Consultation on proposals for New Fair Deal and increases in contributions for members of the Teachers' Pension Scheme (TPS) in 2014/15 – Government response, March 2014

124 Teachers Pensions (Amendment) Regulations 2014 (SI 2014/424)

Teachers in independent schools

Teachers in independent schools are eligible to be members of the Teachers Pension Scheme (TPS). The Independent Schools Council (ISC) explains that teachers in the vast majority of ISC schools[125] are members of the TPS and that this is important in aiding mobility between sectors:

> The terms for independent school teachers in the TPS are the same as for teachers in maintained schools, so that there are no difficulties in transferring between the maintained and independent sectors.[126]

Among the issues the Commission was asked to consider as part of its terms of reference were the "impact on labour market mobility between public and private sectors and pensions as a barrier to greater provision of public services" and "which organisations should have access to public service schemes."[127] In its interim report, published in October 2010, the Commission noted that some stakeholders had suggested that extending access to public service schemes to non-public sector employees would help to reduce the disadvantages faced by private sector and third sector organisations as a result of "Fair Deal". Fair Deal is a policy, introduced in 1999, to cover situations in which public sector employees are compulsorily transferred to a non-public sector employer. It requires the new employer to ensure that there is "broadly comparable" pension provision for future service and that there are options for the handling of existing accrued benefits. The Government recently conducted a review of the Fair Deal policy. The deadline for comments was 15 June 2011.[128]

The Commission noted that arrangements had been in place for some time in some public service schemes, including the TPS, to allow access to private sector employees:

> For instance, the NHS and teachers pension schemes have, for historic reasons, long had many private sector employees. In the case of the NHS, this is to cover General Practitioners working as private sector practices. In the teachers schemes, it is principally to cover teachers in independent schools. The Local Government Pension Scheme has for the last decade offered admitted body status to facility pension arrangements for local authority workforces transferred to private sector contractors. In 2007 there were around 2,500 admitted bodies in the scheme, in addition to the 500 principal local authority employers. These admitted bodies employ about seven per cent of LGPS members.[129]

It commented that these arrangements carried risks to the taxpayer that could be managed, but not completely removed:

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125 "ISC represents the eight leading independent schools associations in the UK, collectively educating more than 500,000 children in 1,260 schools in the UK and select British schools overseas. In total, there are around 2,600 independent schools in the UK." Independent Schools Council website – about us.

126 ISC website – Teaching in an independent school - pay and benefits (viewed September 2012)

127 Independent Public Service Pensions Commission: Interim Report, 7 Oct 2010, p133

128 Library Briefing Paper SN 01665 TUPE and Pensions (June 2014)

129 Independent Public Service Pensions Commission: Interim Report, 7 Oct 2010, para 6.24

> 6.26 However, there are important arguments against widening the current provisions. Doing so would involve the Government bearing additional risks arising from pension liabilities accrued in the private sector. But the Government would have little control over the liabilities being accrued, since it would not set the wages of these employees.
>
> 6.27 Some of these risks can be managed. The Teachers' Pension Scheme requires indemnities from third party financial institutions as a condition of new admission for independent schools and its rules control pensionable pay increases in the final years. But such risks cannot be completely removed and evidence to the Commission suggests that many organisations cannot provide such indemnities. [130]

In its final report, the Commission examined in more detail the pros and cons of extending access to public service schemes (see pages 118-9). It concluded that it was in principle undesirable, but that, ultimately, it was for the Government to decide:

> Recommendation: It is in principle **undesirable for future non-public service workers to have access to public service pension schemes**, given the increased long-term risk this places on the Government and taxpayers (Recommendation 16).
>
> 5.59 The issues concerning access to public service pension schemes are complex and wide-ranging. Enabling access to public service schemes has clear pros and cons and it will ultimately be for the Government to consider how best to address these issues, in the light of its wider policy priorities.[131]

Responding, the Independent Schools Council (ISC)[132] called on the Government to ensure that independent school teachers could take part in any future public sector pension scheme:

> We hope that the government, in considering the recommendations, will take full account of the advantages of encouraging the two-way movement of teachers between the independent and state sectors. This promotes the exchange of best practice, while enriching the experience and developing the expertise of teachers. The ability for our teachers to enrol in the TPS plays an important part in this. ISC itself runs a teacher induction programme, ISCtip, licensed by the DfE, that inducts over 1000 newly qualified teachers per year, many of whom teach in the state sector at some point in their careers. Independent schools and teachers have always paid their full contributions to the TPS. We believe that, provided public sector pensions schemes are set up sustainably, there should be no additional risk to government by including independent school teachers in a new TPS. Indeed in a well-run scheme additional participants will make a positive contribution of benefit to all."[133]

The ATL said that "all individuals working as teachers, or who have an element of teaching as part of their job description, should be allowed

130 Ibid

131 Independent Public Service Pensions Commission: Final Report, 10 March 2011

132 The ICS describes itself as "the umbrella body representing 1,234 independent schools educating more than 500,000 children in the UK, Ireland and overseas." (Ref: http://www.isc.co.uk/AboutUs_WhatisISC.htm_)

133 ISC response to Hutton report: public pension schemes should stay open to independent teachers, 10 March 2011: :

to join the TPS", arguing that it "clearly aids the mobility of staff" between the maintained and private sector.[134] The NUT said:

> The Government is consulting before taking a firm position on the recommendation. The NUT has stated the view that teachers in independent schools should continue to be eligible for the scheme.[135]

On 2 November 2011, the Chief Secretary to the Treasury said:

> Harriett Baldwin (West Worcestershire) (Con)**:** [...] Many teachers in my constituency work in the state sector, but over their careers they will often spend periods in the independent sector too. Will the proposals continue to allow inter-changeability between the two sectors?
>
> Danny Alexander: If agreement is reached, they will. The arrangements that the hon. Lady describes are an important part of the discussions, but they depend on reaching a sustainable agreement on the future of public service pensions along the lines I have set out.[136]

The Proposed Final Agreement published in March 2012 said:

> The Government's decision on Fair Deal means that, subject to agreement on scheme reform, independent schools which already have access to the Teachers' Pension Scheme will continue to do so (for existing and new teachers); and new teachers and independent schools will continue to be able to join the scheme under the existing qualifying criteria.[137]

The *Public Service Pensions Act 2013* enables pension provision to be made for people not in the public service.[138] The details of the types of 'eligible employment' for the purpose of the Teachers' Pension Scheme 2015 are *SI 2014/512*, Sch 1 .

134 ATL's policy on pensions (viewed November 2012)
135 NUT, Reasons for NUT action – key facts for NUT members
136 HC Deb, 2 November 2011,c932
137 DfE, Teachers' Pension Scheme – Proposed Final Agreement, March 2012
138 Public Service Pensions Bill – Memorandum concerning the Delegated Powers in the Bill for the Delegated Powers and Regulatory Reform Committee prepared by HM Treasury, (revised version, 4 October 2012); Public Service Pensions Act 2013-Explanatory Notes

3. Other issues

3.1 Survivors' benefits – unmarried partners

Like other public service schemes, the Teachers' Pension Scheme was reformed in the mid-2000s. One aspect of this was modernisation of survivors' benefits, including the introduction of survivors' pensions for unmarried partners and the ending of rules whereby a widow(er)s pension ceased on remarriage. The reforms were introduced in different ways for different schemes. However, in general, for their dependant to qualify the scheme member either needed service after the date of change or to become a member of the new scheme. This is in line with the long-standing principle that improvements to public service pension schemes are not applied retrospectively, largely on grounds of cost.[139]

Reforms to survivors' benefits in the Teachers' Pension Scheme were announced in June 2006:

> Surviving partner benefits would be introduced for both existing members and new entrants from 1 January 2007;
>
> Pensionable employment undertaken on or after 1 January 2007 will count towards surviving partner benefit and, as with widower's and civil partner's pensions, there will be a two year qualifying period;
>
> A consequence of the introduction of benefits for surviving partners is that the existing provisions under which widow(er) pensions are stopped following re-marriage or co-habitation need to be reviewed.
>
> We, therefore, propose that for members who retire on or after 1 January 2007, dependants' (including widow(er)s') benefits will be payable for life i.e. not stopped on remarriage or co-habitation.[140]

The change was legislated for in SI 2006/3122 and is now (following consolidation of the regulations) in SI 2010/990 (reg 90). For an unmarried partner to receive a survivor's pension, a nomination.[141]

The new scheme introduced from April 2015 made provision for spouses and partners in accordance with the existing provisions.[142] The requirement for there to be a nomination remains.[143] There is an explanation in the scheme guide.[144] The scheme for teachers in Scotland also requires a nomination for unmarried partners to be eligible for a survivors' pension.[145]

The requirement for a nomination in the local government scheme in Northern Ireland was recently subject to legal challenge. In February 2017, the Supreme Court held that the nomination requirement should

139 HC Deb 23 May 1991 c1126
140 Department for Education and Skills, First class, adaptable and sustainable, June 2006, p6; See also, DfES, Modernisation of the Teachers' Pension Scheme (TPS), December 2004;
141 SI 2006/3122 – Explanatory Memorandum, p8
142 HC Deb 20 December 2011 c157-8WS
143 Teachers Pension Scheme Regulations 2014 (SI 2015/512), regs 134-5
144 Teachers' Pensions, Active member guide, December 2015, p22
145 SPPA, Teachers Pension Scheme – Family benefits

be disapplied and that Ms Brewster should be entitled to a survivor's pension under the scheme.[146]

Ms Brewster' lawyers expected there to be a knock-on effect on public service schemes with similar provisions.[147] On 3 March 2017, the Government said it was "considering the Brewster judgment and the impact it has on public service pension schemes." It would "work with these pension schemes to understand what changes, if any, will need to be made."[148]

Teachers Pensions is in discussion with the Department for Education to assess the impact:

> We're in discussion with the Department for Education to assess the potential impact this will have on the administration of the Teachers' Pension Scheme, and will make any necessary changes in due course. Please note that all other requirements in respect of when unmarried partners (i.e. partners other than spouses or civil partners) can be entitled to an adult beneficiary pension from the Teachers' Pension Scheme remain unchanged, read more information here.[149]

For more on the background, see Library Briefing Paper SN-06348 Survivors' pensions for cohabitants (March 2017).

3.2 Survivors pensions – widows and widowers

Teachers' Pension Scheme has provided automatic cover for widowers since 1988, with the option to purchase cover on service before that:

> The Teachers' Pension Scheme has provided automatic cover for widowers' pensions since 6 April 1988. All female teachers have been given the option to purchase cover for pre-1988 service at favourable rates. Very many chose to do so and only those female teachers who did not take advantage of this opportunity have cover for widowers' benefits restricted to their post-1988 service. Information is not held on the number of female teachers who chose not to cover their pre-1988 service for widowers' benefit. To provide widowers' benefit cover from 1972 in respect of all serving female teachers would increase the contribution rate by around 0.15 per cent of salary.[150]

The detailed rules are in the *Teachers' Pension Regulations 2010 (SI 2010/990)*, (reg 94 and Sch 8). There is an explanation on the family benefits section of the Teachers' Pensions website.

The different treatment of widows (who are eligible for survivors' benefits based on service from 1978) and widowers (where this is from 1988) in the NHS scheme was subject to legal challenge in 2011. The

146 Case ref: [2017] UKSC 8 Supreme Court press release 8 February 2017
147 Supreme Court gives woman right to late partner's pension, *Public Finance*, 8 February 2017
148 PQ 65240 3 March 2017
149 Teachers Pensions website – news, 10 March 2017
150 HC Deb, 19 May 2003, c 567W

High Court decided that there was an "objective and reasonable justification" for the difference in treatment.[151]

When the Labour Government was legislating for civil partnerships, it decided that survivors' benefits from contracted-out pension schemes (including public service schemes) should be provided from 1988 (the date from which contracted-out schemes have been required to provide survivors' benefits for widowers).[152] When the Coalition Government legislated in the *Marriage (Same Sex Couples) Act 2013* to allow same sex couples to marry, it provided for them to be treated in the same way as civil partners for pension purposes.[153]

Section 16 of the *Marriage (Same Sex Couples) Act 2013* required the Secretary of State to conduct a review of survivor benefits in occupational pension schemes. The report of the review was published on 26 June 2014. Regarding survivors' benefits from public service pension schemes, it explained:

> 3.1 In most public service schemes, the calculation of survivor benefits for women who survive their male spouse takes into account a greater amount of service than the calculation of survivor benefits for men who survive their female spouse, or surviving same sex spouses or civil partners.
>
> 3.2 In respect of marriages that existed at the date of leaving the scheme, public service schemes generally calculate survivor benefits for women who survive their male spouse taking into account all of the service of the scheme member prior to and since 6 April 19889 . The survivor benefits provided to males who survive their female spouse only take into account the female member's service since 6 April 1988 in most of these schemes.
>
> 3.3 With the introduction of civil partnerships in 2005 and the extension of marriage to same sex couples in 2014, most public service schemes calculate survivor benefits for surviving civil partners and surviving same sex spouses on the same basis as they do for men who survive their female spouse, only taking into account service since 6 April 1988. In each case these benefits are in addition to the minimum requirement on all contracted'out schemes to pay same sex spouses, opposite sex spouses and surviving civil partners a minimum survivor pension.[154]

In November 2016, the Government said it would decide how to respond to the review in due course.[155]

In April 2017, Schools Minister Nick Gibb said the Government had no plans to review survivors' benefits from the Teachers' Pension Scheme:

> There are no plans to review survivors' benefits from the Teachers' Pension Scheme. It has been the policy of successive Governments that any changes or improvements to public service pension schemes are not normally applied retrospectively. This policy protects the current membership and taxpayers from having to meet unforeseen additional costs that were not previously taken

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151 Cockburn v Secretary of State for Health [2011] EWHC 2095 (admin)
152 HC Deb 12 October 2004 c247; SI 2005/2050
153 Equal marriage: The Government's response, December 2012, para 9.16-22
154 HM Government, Review of Survivor Benefits in Occupational Pension Schemes, June 2014
155 PQ 50428, 3 November 2016; See also PQ 16179, 23 November 2015; PQHL1778 4 August 2015;PQ HL5724, 13 March 20150.

> into account, and to which those who would benefit have not contributed towards.[156]

More on the background to this is in Library Briefing Paper CBP-03035 Pensions: civil partnerships and same sex marriages (February 2017) and SN 0405, Teachers' Pensions -background (September 2013).

[156] PQ 70515 24 April 2017

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