



ASLEF's Response to the DWP Consultation - Abolition of contracting out – consultation on a statutory override for Protected Persons Regulations

1. The Associated Society of Locomotive Engineers and Firemen (ASLEF) is the UK's largest train driver's union representing approximately 18,000 members in train operating companies and freight companies as well as London Underground and light rail systems.
2. ASLEF completely opposes any changes to the protection regulations that were hard fought for and promised to our members at the time of privatisation. The consultation fails to consider many important details of the Railway Pension Scheme and also is based on a false premise that a National Insurance hike should lead to an occupational pensions cut.
3. The context of these protections should be remembered. Privatisation created a huge amount of insecurity for our members. From working for one national operator they were to be split and employed by temporary owners who would bid for franchises based purely on profit motives. It was for this reason that Unions fought hard to ensure that some key terms and conditions would be protected by law as part of the privatisation act. One of these key areas was pensions. Our members who were employed at the time of privatisation were promised that they would continue to accrue pensions that were no less generous than they were at that point. This was considered an unbreakable promise made to our members that was enshrined by law. The damage to trust of breaking or reneging on any such undertaking would be significant.

4. ASLEF would contend that this consultation's premise that changes to contracting out should automatically give employers the right to make changes to the Railway Pension Scheme is wrong. Essentially employers (as well as employees) are to face a National Insurance increase. However, over the years, when National Insurance rates have been reduced for employers, the Governments of the time did not argue that employers should improve their occupational pension schemes.
5. At times when there were surpluses within the various pension funds and employees continued to contribute whilst employers took contribution holidays, no legislation was passed to say that the extra funds should be used to create more generous benefits. Indeed, when other changes have been made to pension legislation that create savings, such as the recent change from RPI to CPI uprating, no Minister suggested that all financial benefits on the employers side should be used to improve accrual rates.
6. In short, it seems incompatible that when statutory changes create situations within occupational schemes that financially benefit employers, they are permitted to cream profits with no benefit to members, yet when changes lead to a cost, they are able to immediately pass this on to employees.
7. The vast majority (three quarters) of members of contracted out pension schemes are public sector workers. They have already been given guarantees that their contributions will not be increased and their benefits will not be reduced. Therefore it is disingenuous when the Government claims that "around 90 per cent of people who start to pay higher National Insurance contributions from implementation and reach state pension age over the first two decades of a single tier are likely to see an increase to their state second pension. This will be enough to compensate them for effects of both paying higher employee NICs and of accruing lower pension benefits in their occupational scheme."

8. If three quarters of contracted out employees are guaranteed that their pensions will not be altered it suggests that the majority of those in the private sector will be worse off.
9. The Government is therefore suggesting that legal protections are taken away for our members without any guarantees that they will not lose out financially. This is completely unacceptable.
10. These proposals would also lead to protected members being left vulnerable to future government changes to the state pension. The consultation argues that increased state pension benefits would mean that any cuts to occupational pensions suffered by our members would be neutralised. However, once our members have lost their legally protected benefits, it is more than plausible that a future government could make significant changes to the state pension, either by cutting the amount payable or by once again increasing the age by which you can receive it. This would leave them worse off even if they did benefit in the short term.
11. The Railway Pension Scheme would have the most effected members under this measure. It is therefore concerning that the DWP have failed to take further consideration to the rather uncommon way by which the scheme is funded. The vast majority of contracted out schemes are balance of cost pensions. However the Railway Pension Scheme is a shared costs scheme in which the employer pays 60% of the necessary total contribution rate and the employee pays 40%.
12. It should therefore be highlighted that this has created a strong dialogue between employers and unions in regard to pension costs. In the past, any valuations or changes that have demonstrated a need for increased contributions have been dealt with in a consultative way between the companies and employee representatives. Any major increased costs in

the RPS affect our members as well so ASLEF have discussed sensible changes that allow the scheme to remain affordable but of a high quality. Why the Government feels that it should force issues upon these on-going negotiations is therefore unclear.

13. Should the Government allow employers to make the equivalent savings from the Railway Pension Scheme to negate the increased National Insurance contributions this will mean an employer saving of about 3.4%. However the rules of the Railway Pension Scheme have historically always stated that all contributions will be split on a 60/40 basis. If the employers are therefore able to make savings of 3.4% it will mean that by rule, employees must also save an additional 2.3%. This means that the scheme would have to find savings of 5.7% in total. This would lead to an enormous cut in RPS benefits. Alternatively, a wholesale change to the structure of the RPS would be needed, something that would go beyond the powers suggested within this consultation.
14. Protection measures have helped more than the individuals covered by the legislation. When schemes have been in difficult positions, the continuation of the benefits structure due to the necessary provision for protected members has also assisted in keeping schemes open for those who are non-protected. Therefore, any weakening of protection could have a wider effect across the whole industry.
15. Private companies bid for former publically owned services in order to make profit. When they do so, they know that as with all profit making endeavours, there is an element of risk. When bidding to take these railway franchises or indeed taking over freight enterprises, they are fully aware of the legal protections that are afforded to a number of their staff. They make a calculated commercial decision in pursuit of profits that any possible increased costs that derives from public policy must be taken by

them. Therefore ASLEF sees no reason why a slightly increased National Insurance cost should be shirked by rail industry employers.

16. One of the key arguments that the Government gives in favour of the override is that non-protected members will face an override of their trustees to make these changes (something ASLEF strongly opposes) and they are worried that different terms and conditions and a split workforce would create industrial unrest. It would be unfair for some staff to enjoy better conditions than others. This argument shows a huge amount of hypocrisy. Employers seemed completely disinterested when ASLEF has persistently called for the travel facilities enjoyed by protected members to be extended to all staff. ASLEF has continuously told TOCs and FOCs that this two tier workforce is unfair and divisive and that it is wrong for two workers doing exactly the same job to have such varied conditions. For employers to now claim that this would cause them a problem is sheer hypocrisy and an attempt to increase profit in the guise of fairness.
17. It should be remembered that under these changes, members will already be paying an additional 1.4% National Insurance contribution. To then inform them that they will receive a smaller occupational pension seems entirely unreasonable.
18. It should be noted that ASLEF also opposes the proposed trustee override. Trustees are elected to be the guardians of pension schemes. By law they have responsibility for the health of the scheme and the health of the scheme only. Therefore the union sees it as perverse that employers who have interest in making profit should be able to override the people who seek only to ensure the schemes have enough assets to cover their liabilities. The Union realises that this wider issue is not covered by this particular consultation but the prospect of changing what was a covenant with railway staff enshrined in law to allow something that ASLEF feels is already wrong is completely unacceptable to the Union.

19. Companies have increases and decreases in costs as a constant feature of business. Sometimes these are commercial changes, and other times these are legislative changes. Part of being a successful company is to deal with such changes within the confines of the law and with grown up negotiation with recognised trade unions. ASLEF fails to see why this National Insurance increase should be any different. Changing the law so that the cost will be borne by employees is unfair, especially considering that they will be taking a hit in their pay-packet with higher NI payments themselves. For this reason ASLEF rejects that proposed override for Protected Persons Regulations in the strongest possible terms.

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