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Public Service Pensions Bill Paper

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This Research Paper provides background on the Public Service Pensions Bill, which is to be debated at Second Stage on 25 June 2013.

This information is provided to MLAs in support of their Assembly duties and is not intended to address the specific circumstances of any particular individual. It should not be relied upon as professional legal advice or as a substitute for it.

Paper 88/13 **24 June 2013**

Executive Summary

On 17 June 2013, the Public Service Pensions Bill (the Bill) was introduced into the Assembly by the Minister of the Department of Finance and Personnel (DFP). This paper is to facilitate Members' consideration of the Bill.

The paper considers how the present reforms of public service pensions in Northern Ireland (NI) are based on reforms implemented by the current and previous Westminster Governments; most recently in the form of the Public Service Pensions Act 2013 (2013 Act). All such reforms seek to decrease the cost of public service pensions as a proportion of Gross Domestic Product (GDP).

Similar to the Westminster *2013 Act*, the Bill proposals – as introduced - are broader in nature than changes implemented in this area in the past. The previous reforms were predicted to deliver significant savings in the cost of public service pensions as a proportion GDP. The currently proposed reform – the Bill – is not intended to deliver the same scale of savings. However, the Bill does attempt to address structural deficiencies that have created unfair schemes, arguably in terms of both their delivery of benefits to scheme members, and their sharing of scheme costs between members, employers and the taxpayer. (Section 1)

The Bill is prompted by Westminster's enactment in April 2013 of *the Public Service Pensions Act 2013*. The three Devolved Administrations in the United Kingdom (UK) are expected to implement similar changes to their own public service pension schemes, given that the convention of parity is usually observed by the UK central and devolved governments in the area of pensions. If parity is not followed, Her Majesty's Treasury advised the DFP Minister that NI should be prepared for reductions in its Block Grant.[1] This paper considers the passage of the *2013 Act* through Westminster; as well as what occurred in Scotland and Wales. (Section 3)

In NI there was debate about the issue of having a Legislative Consent Motion in the Assembly to enact in NI the provisions of the *2013 Act*. However, this was ultimately rejected, and the Assembly has introduced its own separate legislation to implement public service pension reform in NI. (Section 2)

Finally, this paper raises a number of key issues for consideration about the contents of the Bill, as introduced. These issues are intended to enhance Members' understanding of the Bill's provisions. (Section 4)

[1] http://www.dfpni.gov.uk/civilservicepensions-ni/policy_consultation_document-2.pdf

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Introduction

This Bill Paper is to inform Members' consideration of the Public Service Pensions Bill (the Bill), which was introduced in the Assembly by the Minister of the Department of Finance and Personnel (DFP) on 17 June 2013.

Within Northern Ireland (NI) there are currently 215,760 employees working within the public services – around 31% of the total workforce.[2] The Bill, as introduced, will create a new public service pension system for those working across the public services in NI.

The Paper first outlines background information about recent public service pension reform throughout the UK. Thereafter the Paper explains how this reform has progressed in NI, specifically in relation to the Bill, as introduced. This is followed by a comparative perspective on how reform has been managed throughout Great Britain (GB). Finally, the Paper outlines key issues that are central to Members' consideration of the current Bill's provisions, as introduced.

Both the *Belfast Agreement* and the *Northern Ireland Act 1998*, established public service pensions as falling within the 'parity' convention. This convention is intended to ensure a consistent UK-wide approach for certain policies and legislation. When presented with policy proposals in areas governed by the parity convention, legislators within Devolved Administrations have to decide whether:

- To adhere to the parity convention and enact legislation mirroring comparable legislation in Great Britain (GB); **or,**
- To depart from parity and enact legislation that is different from the given GB legislation.[3]

Any decision to depart from parity would be based upon the view that specific local needs or circumstances make the proposed GB legislation unsuitable. Where such a decision is made, the consequence is that any extra costs incurred in developing local legislation will be funded through a commensurate reduction in the funding available to that Devolved Administration.

1 Background

The current program of public service pension reform has been driven by the reports issued by the Independent Public Service Pensions Commission (IPSPC).[4] The work of the IPSPC builds upon previous reforms of public service pensions implemented by

[2] http://www.detini.gov.uk/qes_statistical_bulletin_-_march_2013_pdf_.pdf

[3] RaISe, The Issue of "Parity When Legislating in the Northern Ireland Assembly: Key Determinative Factors". This paper is included within the materials provided at the "Assembly Scrutiny of Public Finance Workshops"; which were compiled and developed by RaISe in 2013 as part of the Politics Plus Programme for the Northern Ireland Assembly Legislative Strengthening Trust.

[4] The IPSPC issued their Interim Report on 7 October 2010 (http://www.hm-treasury.gov.uk/d/hutton_pensionsinterim_071010.pdf) and their Final Report on 10 March 2011 (http://www.hm-treasury.gov.uk/hutton_final_100311.pdf).

the UK Labour Government between 2005 and 2010, and the UK Coalition government since 2010. This section presents some background information on the current public service pension landscape in GB and NI. It provides a brief outline of previous reforms, and describes how the current reform proposals have emerged.

1.1 Pensions Landscape

It is possible to observe certain characteristics of the current public service pension landscape which stand in contrast to the characteristics of the private sector pension landscape.

In terms of having any sort of pension, it is more common for public service employees to have an associated pension scheme than in the private sector. Around 17% of public sector employees have no pension provision known to their employer, compared to around 67% in the private sector.[5]

In terms of the types of pension scheme available to employees, it is also possible to identify differences between the sectors. The following paragraphs highlight these differences.

There are two main types of pension – Defined Benefit (DB) and Defined Contribution (DC). A DB scheme is one where the pension value is linked to the salary paid to an individual over their term of employment – either the value of their final salary, or the average value of their salary over their term of employment. A DC scheme is one where the value of a pension is determined by the value of contributions made by employee and employer over the employee's term of employment. DB schemes are considered to be more generous to employees, and more onerous on employers.

DB pension schemes are much more common in the public sector, with DC schemes more common in the private sector. Whilst around 80% of public sector jobs have an associated DB pension; in the private sector the figure is around 10%.[6]

A further distinction between types of pensions is whether the scheme is funded or unfunded. Public sector DB schemes tend to be unfunded – only Local Government pensions schemes among the main public service pension schemes are funded. A funded pension scheme is one where the contributions made by employees and employers are paid into a fund, which is accumulated and invested in order to meet the required payments. Unfunded schemes operate on a 'pay as you go' basis, and there is no fund created in which to accumulate contributions. Pension payments are made by relevant Government Departments for their former employees. Contributions from current employees are received and netted off the total value of payments made. It is important to note that the payments received are not related to the payments being

[5] ONS ASHE pensions table, P1.1 (http://www.ons.gov.uk/ons/rel/ashe/annual-survey-of-hours-and-earnings-pension-tables/2011-provisional-results/index.html)

[6] ONS ASHE pensions table, P1.1 (http://www.ons.gov.uk/ons/rel/ashe/annual-survey-of-hours-and-earnings-pension-tables/2011-provisional-results/index.html)

made. Those payments being **made** to former employees relate to liabilities incurred in the past. The payments which are **received** from members are contributions from current employees for pensions being accrued for payment in future.

Two key components are used to calculate the value of an individual's pension. The first component is the "accrual rate". The accrual rate determines the proportion of one year's salary which should be paid out as pension. For example, an accrual rate of 1/50th means that for each year of service an employee will accrue 1/50th of their salary as pension. Therefore a person who was employed for 30 years would receive a pension worth 30/50th of their salary.

The second key component is the "uprating factor". This is the figure that is used to adjust the value of pension earned in line with inflation. The section below on previous public service pension reform contains details of the UK Government's decision to switch from using the Retail Prices Index (RPI) to the Consumer Prices Index (CPI), and the impact of this decision on the value of pensions.

At present the accrual rate and uprating factor vary across different schemes: some schemes have lower accrual rates, but compensate for this with uprating factors above the CPI base.

1.2 Need for Reform

The key reason why there has been a perceived need for reform of public service pensions has been the significant increase in the cost of those pensions in recent years. Between 1999-2000 and 2009-10, the amount of benefits paid out by the five largest schemes in the UK increased by 32%.[7] In terms of total expenditure as a proportion of Gross Domestic Product (GDP), the cost of public service pensions had increased from less than 1% in 1970 to over 2% in 2010.[8] In December 2004, HM Treasury (HMT) predicted that the cost of pensions would continue to increase during the next fifty years, reaching around 2.3% of GDP in 2030.[9]

The key driver of the increasing cost of public service pensions has been the increasing longevity of former employees. The consequence of this is that pensions are paid out over a longer period than they would previously have been expected to, and that more people who are entitled to public service pensions are alive at the same time. It is argued that the rules governing public service pension schemes have not kept pace with these demographic changes in society.

Such demographic changes are clearly evident in NI. In 1900 the average life expectancy was 47 years.[10] By 2010 the average life expectancy for females had

[7] IPSPC Interim Report, 7 October 2010, pg 8
[8] IFS Green Budget: February 2012, pg 100 (http://www.ifs.org.uk/publications/6000)
[9] Cited in IFS Green Budget: February 2012, pg 100 (http://www.ifs.org.uk/publications/6000)
[10] Dr David Marshall and Dr Jos Ijpelaar – Statistical and Social Inquiry Society of Ireland (SSISI): Seminar on Aging and Implications for Public Services – 13 June 2011.

increased to 81 years, and for males had increased to 77.[11] In terms of the total number of people living aged over 65 years, in 1961 there were 144,522 people. In 2011, there were 266,255 people.[12]

The predictions in the first paragraph of this section - concerning the cost of public service pensions above - were made prior to reforms implemented by the UK Labour and Coalition Governments between 2005 and 2010. The IPSPC Interim Report in 2010 predicted that when the consequences of these previous reforms were taken into account, that the value of public service pensions as a proportion of GDP had already peaked. The impact of these reforms meant that the value of public sector pensions would fall from around 1.9% in 2010, to around 1.4% of GDP by 2060.[13]

1.3 Labour 2005-10 Reforms

The UK Labour Government negotiated changes to all of the main public service pension schemes between 2005 and 2010. Whilst the details of reform are specific to each of the individual schemes, it is possible to identify some common features of the reforms implemented by Labour:[14]

- Survivors' benefits were modified in a number of ways, including their extension to cover unmarried partners;
- Changes in contribution rates, as well as the introduction of contribution rates tiered by pay, for NHS and local government schemes;
- Increases in the pension age; and,
- The introduction of "cap and share" arrangements (see below).

"Cap and share" arrangements were intended to limit the liability of the taxpayer to increases in the costs of providing public service pensions:

> *The cap and share policy is designed to ensure that the cost pressures associated with the rising cost of providing pension scheme benefits (such as improving longevity) are shared between employers and employees up to an agreed employee contribution cap, beyond which all further increases will be the responsibility of employees…The costs will be assessed through the periodic scheme valuations that take place every 3 or 4 years.*[15]

The IPSPC noted that the intention behind "cap and share" seemed to be to keep the levels of employer cost below those reached between 2004 and 2005.[16]

[11] NISRA, Demography and methodology
[12] NISRA, Mid-year population estimates
[13] IPSPC: Interim Report, 10 October 2010, Table 4.A, pg 55
[14] House of Commons Library, Public Services Pension Bill, Research Paper 12/57, 16 October 2012
[15] HM Treasury, Long-term public finance report: an analysis of fiscal sustainability, December 2009, Box 6.A
[16] IPSPC: Interim Report, 7 October 2010, pg 45

It is generally accepted that Labour's reforms would deliver a significant level of savings. A National Audit Office report in 2010 found that the changes to the NHS, teachers and civil service pension schemes meant that:

> *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 these costs, by transferring from taxpayers to employees additional costs arising if pensioners live longer than currently projected.*[17]

However, as noted by the IPSPC:

> *The savings will build up gradually, in line with the gradual increase in the proportion of members accruing benefits under the new pension terms…it will be some time before the full impact of the reforms appears in employers contribution rates.*[18]

The IPSPC concluded that the savings to be achieved from these reforms had not gone far enough to provide a sustainable solution to the rising cost of pensions:

> *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 costs to taxpayers.*[19]

1.4 UK Coalition Government Reforms

In June 2010 the UK Coalition Government announced that the Consumer Price Index (CPI) would replace the Retail Price Index (RPI) as the measurement to determine annual pension uprating.

The rationale behind this decision was that the CPI was used as the main measure of inflation, and has been the basis of the Government's inflation target since December 2003. The key implication of the decision is that the inflation rate measured by CPI is consistently lower than the rate as measured by RPI. The change is expected to result in the use of upratings that are about 0.75 percentage points lower than equivalent RPI figure for that year.[20] The long-term effects of this decision on a national scale are significant:

> *If CPI uprating were to be continued through the 21st century, with an average differential from RPI of 0.75 percentage points as forecast, then subject to how cap and share is operated, this change could reduce public*

[17] NAO, The impact of the 2007-08 changes to public sector pensions, HC662, 8 December 2010, Summary
[18] Independent Public Service Pensions Commission: Interim Report, 7 October 2010
[19] IPSPC: Interim Report, 7 October 2010, 2.25-26
[20] IPSPC: Interim Report, 7 October 2010, 2.12

service pension expenditure by over 10 per cent by 2030 (£5 billion in 2008-09 prices) and 20% by 2060 (£20 billion in 2008-09 prices).[21]

In terms of the effect on an individual's actual pension payments, whilst the difference in upratings in a single year may appear small, the cumulative effect is very significant. The Office for Budgetary Responsibility (OBR) assumes the annual increase in RPI of 3.4% and 2.0% in the CPI – a difference of 1.4% percentage. Should this assumption hold, after ten years the value of a payment uprated using CPI would be around 87% of what it would have been if uprated by RPI; after twenty years, it would be 75%; and after thirty years it would be around 65%.[22]

Finally, shortly after the publication of the IPSPC Final Report, the Coalition Government announced an increase in member's contribution rates by 3.2% on average by 2014-15. This was expected to deliver additional member contributions of £2.8 billion by 2015. The total increase was to be phased in across three years, with the first 40% of the increase introduced in 2012-13.

1.5 Independent Public Service Pensions Commission

Budget 2010 established an Independent Public Service Pension Commission (IPSPC), chaired by Lord Hutton. The terms of reference for this Commission were:

To conduct a fundamental structural review of public service pension provision and to make recommendations to the Chancellor and Chief Secretary on pension arrangements that are sustainable and affordable in the long term, fair to both the public service workforce and the taxpayer and consistence with the fiscal challenges ahead, while protecting accrued rights[23]

The review covered all the major public service pension schemes across the UK, including civil servants, armed forces, NHS, teachers, local government employees, police, firefighters and the judiciary.

The IPSPC published two reports: an Interim Report on 7 October 2010, and the Final Report on 10 March 2011.

1.5.1 IPSPC Interim Report

The IPSPC Interim Report seeks to present a balanced view on the public service pension landscape. The Interim Report begins by clearly stating the value of a public service pension scheme, and cautions against a 'race to the bottom' based upon simple comparisons with the private sector pension landscape. In his Foreword, Lord Hutton asserts:

[21] IPSPC: Interim Report, 7 October 2010, 2.14
[22] House of Commons Library, Public Service Pensions Bill, Research Paper 12/57, 16 October 2012, p 12
[23] http://www.hm-treasury.gov.uk/indreview_johnhutton_pensions_tor.htm

> *We should regard public service pensions as part of an effectively designed overall remuneration system … And whist it is right that taxpayers finance a proportion of public service pensions, as they are also the recipients of the services that are provided by employees, they are also entitled to expect that their hard earned money is spent wisely and to the best possible effect right across the public sector.*
>
> *First and foremost, pensions are provided in order to ensure an adequate income when someone stops working which can help sustain a reasonable standard of living without becoming a burden on the welfare state. If we lose sight of this when we consider the case for reform and end up pushing more people into a reliance on state benefits in retirement, we may well find that overall costs are likely to rise, whatever changes might be made to the design of public service pensions. Simple, sloganistic approaches are not the answer.*[24]

After setting out this basic position, the Foreword goes on to state:

> *It is my clear view that the figures in this report make it plain that the status quo is not tenable. I believe we need to adopt a more prudent approach to meeting the cost of public service pensions in order to strike a fairer balance.*[25]

The Report claims that this more prudent approach is needed, as "*the current public service pensions structure was not designed for modern working patterns and has been unable to respond flexibly to changes in this area and to demographic change".*[26] The consequences of this are:

- Rising benefits due to increasing longevity;
- Unequal treatment of members within the same profession;
- Unfair sharing of costs between the employee, the employer and taxpayers; and,
- Not realising the potential for plurality in the ways public services are provided.[27]

The Interim Report rejected the notion that these structural issues would be best dealt with through a "*funded, individual account, defined contribution model".*[28] This type of suggestion ignored: the major financing burden it would place upon current taxpayers; the ability of Government acting as a large employer to manage risk; and, the increased uncertainty of post-retirement income that would result.

[24] IPSPC: Interim Report, 7 October 2010, pg 3
[25] IPSPC: Interim Report, 7 October 2010, pg 4
[26] IPSPC: Interim Report, 7 October 2010, pg 15
[27] IPSPC: Interim Report, 7 October 2010, pg 15
[28] IPSPC: Interim Report, 7 October 2010, pg 15

The Report identified a set of principles through which long-term reform options should be measured:[29]

- Affordability and Sustainability – This must be considered over the long-term. Any assessment of options must consider the consequences of reforms on take-up of benefits such as pension credit. Sensitivity of future costs to risks, and how these risks are to be managed, must also be considered.
- Adequacy and Fairness – Public service pensions must supply an adequate source of post-employment income to former employees. Judging the fairness of this must consider the distribution of contributions between employees, employers and the taxpayer and fairness between different generations of taxpayer.
- Supporting Productivity – Public service pensions must be consistent with an efficient labour market. This should support the delivery of public services in a manner that achieves value for money. It is also critical that scheme design does not work as a barrier to employees moving between sectors, and the use of different types of organisation to deliver public services.
- Transparency and Simplicity – Schemes need to be easily understood by members who benefit, and by taxpayers who help fund the schemes.

In relation to achieving short-term savings, the IPSPC concluded in its Interim Report that the most effective method would be an increase in member contribution rates, as long as these were managed to protect the lowest paid, and were implemented in a way that would not result in significant drop-outs.[30]

1.5.2 IPSPC Final Report

The key recommendations from the Final Report were laid out in the accompanying press release:

> *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 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 suggest 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 (SPA);*

[29] IPSPC: Interim Report, 7 October 2010, pg 13
[30] IPSPC: Interim Report, 7 October 2010,

- *Introducing a Normal Pension Age of 60 for those members of the uniformed services – armed forces, police and firefighters – who currently have a NPA 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;*
- *Introducing more independent oversight and much stronger governance of all public service pensions schemes;*
- *Encouraging greater member involvement in consultations about the setting up of new schemes, and in the running of schemes; and,*
- *Overhauling the current legal framework for public service pensions to make it simpler.*[31]

The move to link NPA to SPA was intended to mitigate against the greatest risk to increasing pension costs – the longevity of members. Members would be expected to work to an older age to be entitled for their full pension benefit. The IPSPC recognised, however, that the unique nature of work in the uniformed services would possibly require a different NPA.

The setting of cost ceilings was intended to build upon the development of "cap and share" arrangements by the UK Labour Government:

> *These arrangements were agreed between employers and trade unions and the intention was that certain increases in pension costs were shared between employer and employee up to a cap on employer costs. Introducing a cost ceiling would have an automatic default change that will take place if agreement is not reached.*[32]

The IPSPC Final Report argues that the most appropriate way to set a cost ceiling would be to do so as a proportion of pensionable pay.[33]

In terms of the protection of accrued rights, the IPSPC had been asked to ensure that its recommendations protected accrued rights. Its Final Report argued that the boundaries of these accrued rights were unclear. For deferred and retired scheme

[31] IPSPC Press Release, 10 March 2011, *Lord Hutton publishes his final report on public service pensions* (http://webarchive.nationalarchives.gov.uk/20130129110402/http://www.hm-treasury.gov.uk/indepreviw_johnhutton_finalpress.htm)

[32] IPSPC: Final Report, 3 March 2011 pg X

[33] House of Commons Library. Standard Note SN05768, 26 October 2012, pg 19

members, the IPSPC recommended that all rights to future benefits should be recognised as accrued benefits. For currently active scheme members, it was recommended that the UK Government honour pension promises that had been already been accrued by members.

1.6 'Public Service Pensions: Good Pensions That Last'

Following the publication of the IPSPC Final Report, the UK Government entered into a period of scheme-specific discussions with trade unions. In response to developments, the TUC announced its intention to hold a day of strike action on 30 November. On 2 November 2011, Treasury improved its offer to employees, including a more generous accrual rates and permitting transitional relief for staff near their retirement date. This improved off was contained in Public Service Pensions: Good Pensions That Last. The terms of this offer were:

- A Career Average Revalued Earnings (CARE) pension scheme;
- Public service workers benefits to be earned at a rate of $1/60^{th}$ 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 NPA linked to SPA (or 65, whichever is higher);
- Pensions in payment to increase in line with the 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;
- In the funded Local Government Pension Scheme both members contributions and other adjustments to benefits will be reflected in cost ceilings following the outcome of the Department for Communities and Local Government's consultation on alternatives to contribution increases. This means that the cost ceilings presented here are indicative and not final;
- Members given the option at retirement to convert £1 of annual pensions into a £12 lump sum payment, in accordance with HMRC limits and regulations;
- Ill-health, death and survivors benefits (ancillary benefits) to match those currently provided by schemes that are open to new members;
- Members who leave the scheme and re-join within 5 years are to be able to link their new service with previous service, as if they had always been an active member;
- Members transferring between public service schemes to be treated as having continuous active service (which would include those transferring between schemes who had re-joined public service after a gap of less than 5 years); and,

- An employer contribution cap to provide backstop protection to the taxpayer against unforeseen costs and risks. [34]

The offer was made conditional on securing agreement by the end of 2011. On 20 December Treasury announced that agreement had been reached with most unions on the main terms of the new arrangements for the local government, health, civil service and teachers' schemes, meaning the offer made in November had been "secured".[35] More detail on the response of the main UK unions to the reform process can be found within House of Commons Library Research Paper 12/57.[36]

2 Public Service Pensions Reform in Northern Ireland

Within the context of those developments outlined in Section 1, the Assembly will consider the Public Service Pensions Bill (the Bill). The following sub-sections provide: a brief outline of the Bill introduced by DFP; and, an overview of key developments involving the Executive and the Assembly.

2.1 The Bill – as introduced

Objectives

The main objectives of the Bill – as introduced - are the same as those in the Westminster *2013 Act:*

- Enable the creation of new public service schemes based upon CARE;
- Link the NPA to the SPA, except in schemes for uniformed services which would have a NPA of 60, subject to regular review;
- Provide transitional protection for those closest to retirement – people within 10 years of their NPA on 1 April 2012 would remain in existing schemes. The specific details of these arrangements for each scheme would be set out in scheme regulations. (The Bill also makes provision for tapering arrangements for those with 4 years of meeting this clause[37]);
- Introduce an "employer cost cap" – a mechanism to manage changes in scheme costs should they breach a limit; [38]

[34] https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/205837/Public_Service_Pensions_-_good_pensions_that_last._Command_paper.pdf

[35] House of Commons Library, Public Service Pensions Bill, Research Paper 12/57, 16 October 2012, p 24

[36] House of Commons Library, Public Service Pensions Bill, Research Paper 12/57, 16 October 2012, p 25-8

[37] More information on these arrangements can be found at http://www.civilservice.gov.uk/pensions/reform/questions-and-answers

[38] The cost cap is "a rate, expressed as a percentage of pensionable earnings of members of the scheme, to be used for the purpose of measuring changes in the cost of the scheme". The rate is to be set in accordance with directions given by Treasury in GB (Westminster Public Service Pensions Act 2012, (12)), and by DFP in Northern Ireland (Public Service Pensions Bill (Northern Ireland) – (12). Further guidance on cost caps can be found at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/205839/Establishing_an_employer_cost_cap_in_public_service_pension_schemes.pdf

- Introduce new requirements for 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 effects for members;
- Extend access to public schemes to allow public service workers whose employment is transferred to new employers to retain membership of public service scheme; and,
- Add the new schemes to the list covered by the *Pensions Increase Act 1971,* so that same arrangements in respect of increasing pensions in the old schemes apply to new schemes (i.e. increases in line with CPI).

Structure

The Bill - as introduced[39] - is structured in the following way:

- Establishment of new schemes – These clauses contain the main enabling power for the new public service pension schemes. The schemes will be created in regulations, which must be compliant with the terms of the Bill. The Bill enables Departments to make these regulations. (Clauses 1, 2, and 3)
- Governance – The clauses within Governance provide that the new schemes which are set up under the Bill must have a scheme manager, a pension board, and, a scheme advisory board. (Clauses 4, 5, 6, and 7)
- Design – This group of clauses relates to the design of the new pension schemes as DB CARE schemes, the procedure for revaluing earnings, and the utilisation of the SPA as the NPA. (Clauses 8, 9, and 10)
- Cost Control – These clauses deal with scheme valuations, the establishment of employer cost caps, employer contributions in funded schemes, the provision of information to scheme members and DFP, record keeping and regulatory oversight. (Clauses 11, 12, 13, 14, 15, 16, and 17)
- Transitional – The clauses within this group concern the restriction of benefits provided under existing schemes after those schemes have closed, the closure of existing injury and compensation schemes, and final salary links. (Clauses 18, 19 and 20)
- Procedure for scheme regulations – These clauses deal with arrangements for responsible bodies carrying out consultations prior to changing or making scheme regulations, establishes protected elements for a period of 25 years, provides a procedure for retrospective provisions, and legislative procedures for the making of scheme regulations. (Clauses 21, 22, 23 and 24)

[39] http://www.niassembly.gov.uk/Documents/Legislation/Bills/Executive-Bills/session-2012-2013/Public%20Service%20Pensions%20Bill.pdf

- New Schemes: supplementary – Clauses in this section make provision for non-public sector employees to be members of the newly created public service pension schemes, and for scheme managers and employers to make payments towards the provision of pensions not delivered under new schemes established by the Bill. (Clauses 25, 26, and 27)
- Existing Schemes: supplementary – enables local government pension scheme reform to be brought into force one year earlier than the rest of public service pension schemes. (Clauses 28 and 29)
- Public body pension schemes – This section covers public service schemes outside the main schemes, run for staff of Non-Departmental Public Bodies, Arms-Length bodies and similar bodies. (Clauses 30, 31, and 32)
- General – Covers general definitions, regulations, orders and directives. (Clauses 33 and 34)
- Final – Provides when and how the provisions of the Bill will come into force, and that any expenditure for the provision of pensions to present or former holders of judicial office are to be paid out of money provided by the Assembly (Clauses 35 and 36).

Further detail on the specific clauses and related schedules of the Bill can be found in the Explanatory and Financial Memorandum.[40]

RaISe has reviewed the provisions of the Westminster *2013 Act*, and the NI Bill. **The provisions contained in these two pieces of legislation are practically identical, implementing the same package of reforms.**[41]

Timetabling

In January 2013, a DFP Briefing Paper to the Committee for Finance and Personnel (CFP) confirmed that:

> *The projected timescale for Royal Assent being secured for the Bill has been provisionally set for **April 2014.** This timescale presupposes a date for the Bill's introduction in the Assembly in **June 2013**.*
>
> *Following enactment, secondary legislation will be required to amend the rules of each devolved public service pension scheme to give effect to the reform measures carried in the Bill. This work will be taken forward by each of the Ministerial Departments which have individual responsibility for pensions schemes. It is estimated that this process may take up to 10*

[40] http://www.niassembly.gov.uk/Documents/Legislation/Bills/Executive-Bills/session-2012-2013/Public_Service_Pension_Bill_EFM%20-%20As%20Introduced.pdf

[41] The only substantive differences appear to relate to areas where Westminster has legislative authority which Northern Ireland does not have, and so the section is not relevant to the Northern Ireland Bill. For example, the Bill introduced to the Assembly does not replicate sections 33 (Great offices of state), 34 (Parliamentary and other pensions schemes: pension age), 35 (Members of the European Parliament), and, 36 (Defence Fire and Rescue Service and ministry of Defence Police: review).

months to complete. Current estimates are that the requisite secondary legislation and revisions to schemes' administrative processes will be in place by ***February 2015.***

…On 3 December 2012 the Chief Secretary to the Treasury confirmed in writing to the Minister that a failure or delay in passing the necessary legislation to implement the pensions reforms in line with the deadlines contained in the Westminster Bill will result in a proportionate reduction in the Northern Ireland block grant.[42]

2.2 Key Developments

Under the current devolution arrangements, the public services pension schemes for which the Assembly has legislative authority are:[43]

Pension Scheme	Minister	Department
NI Teachers' Pension Scheme	John O Dowd MLA	Department of Education
Local Government Pensions Scheme (NI)	Alex Attwood MLA	Department of the Environment
Principal Civil Service Pension Scheme (NI)	Sammy Wilson MP MLA	Department of Finance and Personnel
Health and Social Care Pension Scheme Firefighters Pension Scheme (NI)	Edwin Poots MLA	Department of Health, Social Services and Public Safety
Police Service of Northern Ireland Pension Scheme	David Ford	Department of Justice

There have already been some moves towards reform in Northern Ireland prior to the IPSPC and Public Service Pensions Bill, such as:

- The Local Government Pension Scheme (Northern Ireland) already operates a pension age of 65 for all staff;
- The Northern Ireland Civil Service introduced a CARE pension scheme with a pension age of 65 for all new entrants from 30 July 2007 (NUVOS);
- The Northern Ireland Teacher's Pension Scheme introduced a pension age of 65 for all new entrants from 1 April 2007; and,

[42] DFP Briefing paper to CFP, 4 January 2013
[43] http://www.dfpni.gov.uk/civilservicepensions-ni/policy_consultation_document-2.pdf

- The Health and Social Care Pension Scheme has a pension age of 65 for all new entrants after 1 April 2008.[44]

However, these reforms have applied only to new entrants since the relevant reform date. Staff employed before these dates have remained within the previous pension arrangements.

On 8 March 2012, the Northern Ireland Executive agreed in principle to reforms of all the schemes for which it was responsible:

- To commit to the policy for a new career average revalued scheme model with pension age linked to State Pension Age to be adopted for general use in the public service schemes; and,
- To adopt this approach consistently for each of the different public sector pension schemes in line with their equivalent scheme in Great Britain and not to adopt different approaches for Northern Ireland.[45]

Responsibility for pensions for the armed forces and senior judiciary is reserved to Westminster, so these schemes are covered by the *2013 Act*.[46]

Later in 2012, in response to the Westminster Public Service Pensions Bill, the Minister for Finance and Personnel intended to introduce a Legislative Consent Motion so that the terms of the Westminster Bill would pertain to the schemes for which NI had legislative authority. The justification for this was that:

> *Although public service pension arrangements for Northern Ireland is a transferred matter a long standing convention of parity exists between Northern Ireland and Great Britain in this area, and accordingly the normal approach for Northern Ireland schemes is to implement changes in pension policy as a consequence of policy decisions taken at United kingdom Government level, and in line with change made to the equivalent schemes in Great Britain rather than to develop or formulate policy directly…An Assembly Bill to give effect to the Coalition Government's pension reforms in the Northern Ireland public service schemes would contain virtually identical provisions to those carried in the Westminster Bill.*[47]

In a statement to the Assembly on 26 November 2012, the Minister for Finance and Personnel confirmed that the Executive had not agreed to his proposal to pass a Legislative Consent Motion (LCM). The Minister claimed that this could pose a significant threat to the ability of the Assembly to have all primary and secondary legislation in place by April 2015. DFP had commissioned an estimate of the savings foregone should the reforms not be implemented for the Health and Social Care Scheme by the Government Actuarial Department (GAD). This analysis estimated the

[44] NIAR 114-13.
[45] DFP communication to Committee for Finance and Personnel, dated 4 January 2013
[46] House of Commons Library, Standard Note SN6545, 12 February 2013, pg 11
[47] DFP Letter to CFP, dated 25 September 2012

annual cost of savings foregone would be £100m – around 7% of the pensionable pay bill. When DFP extrapolated this 7% across the other public service pension schemes affected, the total cost of savings foregone was estimated by DFP to be £262m.[48]

Further to CFP requests for estimates specific to each NI public service pension scheme in May 2013, DFP commissioned further GAD analysis, expected to be available to CFP on 21 June 2013. In specific terms:

> *…the Department has now commissioned the Government Actuary's Department (GAD) to provide scheme-specific calculations for the four other unfunded pension schemes – teachers, police, fire fighters and civil servants…it should be noted, however, that those estimated costs are based on schemes agreeing to adopt scheme designs that are equivalent to GB schemes. If schemes here choose a different scheme design, the fee for doing more detailed work could exceed £100,000.* [49]

DFP launched a Policy Consultation document on the reform of Principal Civil Service Pension Scheme (Northern Ireland) on 22 January 2013 - Northern Ireland Public Service Pensions Reform -Consultation on proposals to Reform Public Service Pensions[50]. The closing date for responses was 15 April 2013. The consultation received 52 responses in total – 36 individual scheme members, 7 organisational bodies, 8 trade unions and 1 collective trade union.[51]

RaISe reviewed DFP's written briefing to CFP dated 9 May 2013, which details key points raised during the consultation exercise, and the Department's related responses. Where appropriate, this information is highlighted in section 4 of this Bill Paper, which outlines key issues about the Bill (as introduced). The key issues which raised comment during the consultation exercise were:

- The change in the pension age and its implications for a number of physically demanding roles;
- Transitional arrangements;
- Revised scheme governance measures;
- The use of CARE;
- Managing the cost of public service pensions;
- The Westminster Bill;
- Cost-ceilings;
- The decision to screen out a full EQIA; and,
- Implementation factors.

[48] Statement to the Assembly by Sammy Wilson MP MLA, Minister for Finance and Personnel, 26 November 2012

[49] http://www.niassembly.gov.uk/Documents/Official-Reports/Finance_Personnel/2012-2013/130512_PublicServicePensionsBill_WayForward.pdf

[50] http://www.dfpni.gov.uk/civilservicepensions-ni/policy_consultation_document-2.pdf

[51] Northern Ireland Public Service Pension Reform, Consultation on proposals to Reform Public Service Pensions from April 2015, 20 May 2013 (http://www.dfpni.gov.uk/civilservicepensions-ni/index/latest-news/public_service_pensions_bill.htm)

In January 2013, DFP provided a paper to the CFP, wherein it explored areas in which there possibly was scope for NI to deviate from the approach adopted at Westminster. The DFP paper notes that HMT funding projections are formulated on the basis that the policy intentions of the Westminster Public Service Pensions Bill would be applied in NI, and that the recent approach to devolved pension schemes has been to apply changes in line with policy developed centrally.

The Westminster *Public Service Pensions Act 2013* provides a framework for the entire public service pension landscape. It is primary legislation, and is high-level in nature. As such, and given the constraints of potential financial consequences and the Executive's previous agreement on public service pension reform on 8 March 2012, there is limited scope for deviating from the terms of the *2013 Act* in the NI Bill.

It is in the implementation of secondary legislation, led by each of the relevant Ministerial Departments, which will provide potential opportunities for local variation. In doing so Ministers will be:

> *…likely to give consideration to the approach taken to date in mirroring their comparable scheme in Great Britain when designing their Northern Ireland scheme and its regulations.*
>
> *…Ministers will need to take account of keeping within the parameters of cost, the overall core provisions set out in primary legislation and the costs of changing their IT systems.*[52]

Some of the areas where there may be scope for variation in secondary legislation are:

- Scheme accrual rates;
- Annual revaluation of pension benefits whilst in service (**not** the uprating of pensions which are deferred are in payment);
- Employee contribution rates;
- Lump sum payments;
- Ancillary benefits; and,
- Arrangements for members who leave and re-join a scheme.[53]

DFP reiterate that whilst there will be scope for variation in the areas listed above, the key constraint to such variations will be the financial costs.

The current rates for the main public service pension schemes in NI are outlined below:[54]

Scheme	**Annual accrual rate**	**Annual rate for revaluation of**	**Average employee contribution rate**

[52] DFP Briefing Paper to CFP, 25 January 2013
[53] DFP Briefing Paper to CFP, 25 January 2013
[54] DFP Briefing paper to CFP, 25 January 2013

		accrued benefits (active members)	in CARE schemes at April 2015
Civil Service	1/43.1	CPI	5.6%
NHS	1/54	CPI + 1.5%	9.8%
Teachers	1/57	CPI + 1.6%	9.6%
Local Government	1/49	CPI	6.5%*

*Average employee contribution for members at April 2015 for Local Government scheme in NI was not included in the DFP figures. The figure included in the table was calculated by using the banded contribution rates for 2013/14, and calculating an average contribution rate.[55]

3 A Comparative Perspective

The following sub-sections set out key legislative developments in GB in relation to public service pension reform. The information is intended to provide a comparative perspective, further informing Members' consideration of the recently introduced Bill in NI.

3.1 Westminster *Public Service Pensions Act* – Legislative Process

The Westminster Public Service Pensions Bill (the Westminster Bill) was published on 13 September 2012. This was intended to be the primary legislation, which was required to "create the framework necessary to enable changes to public service pensions".[56] The Bill received Royal Ascent on 25 April 2013,[57] enacted as the *Public Service Pensions Act 2013* (the *2013 Act*).

The *2013 Act* applies on a UK-wide basis, with Devolved Administrations in the UK retaining their ability to make regulations, within its legislative framework. It draws upon the recommendations of the IPSPC, and "Public Service Pensions: Good Pensions That Last". The main elements are to:

- Enable the creation of new public service schemes based upon CARE;
- Link the NPA to the SPA, except in schemes for uniformed services which would have a NPA of 60, subject to regular review;

[55] http://www.nilgosc.org.uk/Circulars%202013/Circ%202/Circular02_2013.pdf
[56] HM Treasury press Release, 9 Mary 2012, Public Service Pension Bill
[57] http://services.parliament.uk/bills/2012-13/publicservicepensions.html

- Provide transitional protection for those closest to retirement – people within 10 years of their NPA on 1 April 2012 would remain in existing schemes. The specific details of these arrangements for each scheme would be set out in scheme regulations;
- Introduce an "employer cost cap" – a mechanism to manage changes in scheme costs should they breach a limit; [58]
- Introduce new requirements for 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 effects for members;
- Extend access to public schemes to allow public service workers whose employment is transferred to new employers to retain membership of public service scheme;
- Add the new schemes to the list covered by the *Pensions Increase Act 1971,* so that same arrangements in respect of increasing pensions in the old schemes apply to new schemes (i.e. increases in line with CPI); and,
- End existing pension arrangements for future holders of Great Officers of State.[59]

From the research undertaken to date by RaISe, it appears that a full macro-economic analysis of the consequences of the recommended reforms is unavailable. No such detailed analysis was included in the IPSPC Reports. The IPSPC recommendations were framed with the intention of ensuring that public service pensions did not act as a barrier to labour market mobility. However, there is no measure or analysis of this potential consequence.

The following link provides detail on the *2013 Bill's* passage through Westminster, with links to relevant papers:

http://services.parliament.uk/bills/2012-13/publicservicepensions/stages.html

The sub-section below highlights key developments during committee stages in the House of Commons and House of Lords, which may aide Members' understanding of debate surrounding the NI Bill provisions.

[58] The cost cap is "a rate, expressed as a percentage of pensionable earnings of members of the scheme, to be used for the purpose of measuring changes in the cost of the scheme". The rate is to be set in accordance with directions given by Treasury in GB (Westminster Public Service Pensions Act 2012, (12)), and by DFP in Northern Ireland (Public Service Pensions Bill (Northern Ireland) – (12). Further guidance on cost caps can be found at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/205839/Establishing_an_employer_cost_cap_in_public_service_pension_schemes.pdf

[59] House of Commons Library, Research Paper 12/72, Public Service Pensions Bill, 29 November 2012, pg 5

3.1.1 House of Commons Committee Stage

House of Commons Library Research paper 12/72 "Public Service Pensions Bill: Committee Stage Report", provides a guide to the main issues debated in the Committee stage of the Bill. The paper notes:

> *The Government made a number of amendments to the Bill. Most were either "minor and technical", or clarified how provisions were intended to work.*
>
> *No opposition amendments were accepted. The provisions that were subject to the most debate in Committee included: increases in the normal pension age; whether there was sufficient protection for members against changes to their benefits in future; protection for accrued rights; governance arrangements and the application of various provisions to the Local Government Pensions Scheme.*[60]

In his presentation to the Public Bill Committee, Lord Hutton stated that the Bill was:

> *An important step in the right direction…My main concerns at present are centred on the provisions dealing with scheme closures and how this might affect the Local Government Pension Scheme and the proper protection of accrued rights. There is still no definition of these in the Bill. I also feel there is a strong case to improve specific provisions in the Bill dealing with the membership of the new pension boards so that employee representatives sit as of right, on all these new bodies.*

Closure of existing schemes is covered in section 18 of the *2013 Act*. This section states that benefits may not be provided under existing pension schemes for service provided after the closing date of the scheme, except where transitional arrangements were in place. The closing date would be 5 April 2015 for all schemes, except for local Government Pension Schemes in England, Wales and NI, which will close on 1 April 2014. Lord Hutton's concerns centred on the possibility that closing Local Government Schemes on a specific date may trigger a "section 75 debt" in local government schemes which are currently in deficit. This would result in local authorities becoming liable for scheme debts. The UK Government gave assurance that such concerns were misplaced, as the Westminster Bill made no provision for local authority pension funds to be closed, just that the schemes would be closed.

In relation to definitions of accrued rights, the Minister acknowledged the difficulties with creating a definition, whilst at the same time assuring Committee Members of the Government's commitment to the general principle:

> *It has proved difficult to try and define accrued rights. There are already differences in the old individual schemes and occupations; there will no*

[60] House of Commons Library, Research Paper 12/72, Public Service Pensions Bill, 29 November 2012, pg 2

doubt be differences in new schemes…One concern I have is that, if we try to define accrued rights in the Bill, there is a risk of coming up with a definition that acts as a minimum. Without intending to do so, one might end up taking out some accrued rights from one particular scheme because a minimum definition had been provided…It is not our intention to play with accrued rights. Everyone accepts the general principle that those rights must be protected where it is clearly defined that they have protection.[61]

3.1.2 House of Lords' Stages

House of Commons Library Standard Note 6572 "Public Service Pensions Bill – Lords' Stages", provides a guide to the Bill's passage through the House of Lords. In summary:

All the amendments made to the Bill in the house of Lords were in the name of the Government Minister, except for two related to the pension age for the members of the Defence Fire and Rescue Service and Ministry of Defence (MoD) Police, which were opposed by the Government. The House of Commons voted to reject these amendments on 22 April 2013. However, the Government subsequently accepted an opposition amendment to require a review of the effect of the Bill on the MoD fire and police services, with particular regard to the impacts on the health and well-being of the individuals affected.[62]

3.2 Devolved Administrations

The IPSPC Final report recognised that a number of public service pensions schemes were the responsibility of Devolved Administrations, and not Westminster. The levels of responsibility for public service pension policy vary across UK.

Despite this scope for variance - pre-the *2013 Act* - existing schemes across the UK have been the same, as the Devolved Administrations have followed the long-standing parity convention.[63] Treasury echoed this when it advised the Finance Minister that failure to reform in line with GB would result in commensurate reduction of Block Grant.[64] This supports the IPSPC recommendation that its proposed new schemes

[61] House of Commons Library, Research paper 12/72, Public Service Pensions Bill: Committee Stage Report, 29 November 2012, pg 19

[62] House of Commons Library, Standard note SN6572, Public Service Pensions Bill – Lords' stages, 29 April 2013

[63] RaISe, "The Issue of Parity When Legislating in the Northern Ireland Assembly: Key Determinative Factors". This paper is included within the materials provided at the "Assembly Scrutiny of Public Finance Workshops"; which were compiled and developed by RaISe in 2013 as part of the Politics Plus Programme for the Northern Ireland Assembly Legislative Strengthening Trust.

[64] Northern Ireland Public Service Pension Reform, Consultation on proposals to Reform Public Service Pensions from April 2015, 20 May 2013 (http://www.dfpni.gov.uk/civilservicepensions-ni/index/latest-news/public_service_pensions_bill.htm)

should be “part of a UK-wide policy framework that extends to Scotland, Wales and Northern Ireland, with limited adaption of other features to meet local circumstances”.[65]

Concerns were raised during the passage of the *2013 Act* through the House of Commons about the effect of the legislation on Westminster’s relationship with the Devolved Administrations. The Government responded:

> *Clause 3 provides more detail about how the power to made scheme regulations can be used. It gives the responsible authority discretion to use regulations as it considers appropriate, within the limits set out in the rest of the Bill…*
>
> *The clause contains the consent requirements for scheme regulations, which mark a slight extension to the current situation to require Treasury consent for all non-devolved schemes. The clause maintains the current and long-standing consent arrangements with devolved Administrations. Those consent requirements for scheme regulations allow the Treasury and the Executive in Northern Ireland to perform a central scrutiny role across public service schemes. It is right that the Treasury has a role given that it has complete responsibility for public spending and the oversight of public pension policy.*[66]

The following sub-sections outline key considerations arising in Scotland and Wales about the Westminster *2013 Act.*

3.2.1 Scottish Parliament

For Scotland, public service pension policy for the vast majority of schemes is reserved to Westminster, except responsibility for the pensions to some Scottish Non-Departmental Public Bodies (NDPBs).[67] A report published by Audit Scotland explained that:

> *The UK government is primarily responsible for setting policy for public sector pensions. Within this, responsibility for some policy aspects of five of the six main schemes in Scotland (all but the civil service), including aspects of scheme design, lies with Scottish ministers, or with Scottish ministers and HM Treasury ministers jointly.*[68]

Whilst critical of the nature of reform proposed by the UK Coalition Government, the Scottish Government recognised its sub-ordinance to Westminster in this area:

[65] IPSPC: Final Report, 3 March 2011, pg X
[66] House of Commons Library, Research paper 12/72 Public Service Pensions Bill: Committee Stage Report, 29 November 2012, pg 11
[67] Scotland Act, Schedule 5
[68] Audit Scotland – The cost of public service pensions in Scotland (February 2011), p18

As all the main pension schemes – those for local government, national health service workers, teachers, police officers, firefighters' and civil servants – are only executively devolved to Scottish ministers or are entirely reserved, Westminster continues to set the main terms for these schemes.[69]

During the Westminster legislative process, there were considerations given to how the small number of schemes for which the Scottish Parliament had legislative authority. If had been proposed that the Scottish Parliament should pass an LCM to allow the terms of the Westminster *2013 Act* to apply to those schemes under Scottish control. However, the Scottish Government rejected this:

Given this government's opposition to the way in which the UK Government is conducting long term pension reform, the lack of flexibility and the lack of certainty being offered we can not willingly agree to the suggested approach.

Where we can act differently we will take the opportunity to do so. There are six small schemes that are affected. We will assess their financial health and if change is necessary then it will be done by this Parliament in line with our values and alongside employees.

I have today written to Chief Secretary to the Treasury Danny Alexander to confirm that we will not support the transfer of any public sector pensions to UK control.[70]

Consequently, the Westminster Bill was amended to remove provisions pertaining to schemes under Scottish control. Despite this amendment, the Bill would still cover the vast majority of public service workers in Scotland and Wales.[71] This situation was explained during debate in the House of Lords:

The Bill will still make provision for Scottish schemes for which Scottish Ministers have executive, but not legislative, competence. These are schemes relating to teachers, health service workers, firefighters, police and local government workers in Scotland.

[…]In respect of public sector pensions in Scotland and Wales, the areas for which the Scots and Welsh have complete devolved authority are very small. In Scotland, we are talking about part of the judiciary … and certain public bodies. For the generality of public servants in Scotland, 98% to 99% of them will be covered by the Bill. […]Equally in Wales, the number of people for whom the Welsh Assembly has total authority is very small.

[69] Scottish Parliament, Official Report, Finance Committee, 9 January 2013, c2029
[70] http://www.scotland.gov.uk/News/Releases/2012/11/pension-reform-28112012
[71] House of Commons Library, Standard Note SN 6545, Public Service Pensions Bill 2012/13: devolved administrations, 12 February 2013

[…]Again, the vast bulk of public servants in Wales will be covered by the Bill even as amended.[72]

3.2.2 Welsh Assembly

The National Assembly for Wales has legislative competence in relation to pension schemes for Assembly Members, Welsh Ministers and members of local authorities only.[73] Legislative competence for the other public service pension schemes in Wales remains in Westminster, although the Welsh Assembly has power to make regulations for firefighters' pensions.

Therefore, as noted in the quotation the House of Lords in the sub-section above on Scotland, the Westminster *2013 Act* covers the vast bulk of public service pensions in Wales. The Welsh Assembly passed an LCM in relation to those schemes for which it had legislative competence on 29 January 2013.[74] This meant that those schemes under Welsh control would be covered by the provisions of the Westminster *2013 Act.*

4 Issues for Consideration

Outlined below are key issues and related detail that should inform Members' consideration of the Bill, as introduced.

4.1 No Legislative Consent Motion

As noted above, an LCM was the Minister for Finance and Personnel's preferred method for enacting reforms in this area. However, the Executive did not agree to this approach.[75] Members may be interested in considering what extra costs have been incurred by deciding not to use an LCM, and what benefit will be derived from this Assembly process, instead of Westminster's? For example, will the interests of NI be better served by DFP's introduction of a Bill, which largely mirrors the Westminster *2013 Act*? DFP argues that its approach is largely based on the financial considerations, and that the lack of agreement at the Executive for an LCM will result in inefficient use of resources and Assembly time?

Contrary to this position, there have been arguments that NI has not sufficiently explored the possibility of departing from all the provisions of the Westminster *2013 Act*. In their consultation response to DFP, the Northern Ireland Committee of the Irish Congress of Trade Unions (NIC-ICTU) argued:

TUS does not accept that it is the role of the NI Executive and in particular the NI Assembly to just replicate in full the Westminster Bill. Public Service

[72] HL Deb, 9 January 2013, c 173 and 177

[73] House of Commons Library, Standard Note SN6545, Public Service Pensions Bill 2012/13: devolved administrations, 12 February 2013

[74] http://www.assemblywales.org/bus-home/research/bus-assembly-publications-monitoring-services/bus-lcm_monitor/bus-lcm_monitor-2012.htm

[75] Statement to the Assembly by Sammy Wilson MP MLA, Minister for Finance and Personnel, 26 November 2012

> *pensions are a devolved matter and there is a need to give full and proper assessment to the issues raised in this response and by the NIC ICTU Trade Union Side both in its engagement with the Assembly DFP Committee and in the meetings with DFP/Sponsoring Departments' Officials.*[76]

The Department's response recognised that whilst public service pension policy is devolved to the Assembly, there is a general convention in this area that policy broadly mirrors that adopted in GB. DFP argue:

> *The proposal for pension reform maintains an established approach and is in line with Executive decisions taken for policy, including the decision taken on 8 March 2012 that policy for pension reform should be implemented in devolved schemes consistently and in line with the changes for the equivalent schemes in Great Britain.*[77]

However, it may be noted that the Executive agreement referred to by DFP was reported in writing to CFP on 4 January 2013 as encompassing two points:

- To commit to the policy for a new career average revalued scheme model with pension age linked to State Pension Age to be adopted for general use in the public service schemes; and
- To adopt this approach consistently for each of the different public sector pension schemes in line with their equivalent scheme in Great Britain and not to adopt different approaches for Northern Ireland.[78]

This appears to indicate that the Executive has agreed only to commit to CARE pension schemes linked to the SPA; and that this approach will be adopted in line with appropriate schemes in GB.

However, the agreement does not seem to cover some of the other elements of the Bill (as introduced), such as: transitional measures for members nearing retirement; introduction of cost ceilings; and, new administrative arrangements for schemes. It is therefore unclear from the facts currently available as to exactly what the Executive position was on those matters.

4.2 The estimated cost of failure to implement reforms in time

Part of the Minister for Finance and Personnel's rationale for hoping to use an LCM was the risk of failing to have all legislation completed in time (that is in accordance with the Westminster *2013 Act)*: if this occurred, the Block Grant would be adversely

[76] Northern Ireland Public Service Pension Reform, Consultation on proposals to Reform Public Service Pensions from April 2015, 20 May 2013 (http://www.dfpni.gov.uk/civilservicepensions-ni/index/latest-news/public_service_pensions_bill.htm)
[77] Northern Ireland Public Service Pension Reform, Consultation on proposals to Reform Public Service Pensions from April 2015, 20 May 2013 (http://www.dfpni.gov.uk/civilservicepensions-ni/index/latest-news/public_service_pensions_bill.htm)
[78] DFP communication to Committee for Finance and Personnel, dated 4 January 2013

impacted. As noted above, DFP estimate the annual cost of not implementing the reforms at £262 million per year.

This figure was based upon analysis carried out by the Government Actuary's Department (GAD) on the Health and Social Care Pension Scheme. The calculated cost for the Health and Social Care scheme was then extrapolated across the other schemes. Unions have been highly critical of this methodology and the estimate's accuracy:

> *There is no proper basis or assessment of how the Finance Minister arrived at the quoted £262m figure...the work done by GAD was predicated on the NI HSC Scheme extrapolated across the rest of the NI Public Service Schemes on a 7% figure. The HSC costing is disputed as it applied a baseline cost of 26% vis-a-vis the published cost figure of 21%. No account was taken of scheme variables across the other schemes such as membership uptake pension values, age profile, the impact of auto-enrolment to list just a few.* [79]

DFP's response to the Unions reiterated that the Minister has already:

> *Made clear that in the absence of actual figures provided from HM Treasury, these estimates are intended to give an illustration of the scale of the financial penalty which would be imposed as a consequence of a delay or failure to introduce the required reforms.* [80]

In response to a request from CFP in May 2013 the Department commissioned GAD to provide scheme specific estimations for each of the other public service pension schemes. The results of this work are still outstanding.[81]

4.3 Cash Flow to undermine sustainability of current reform package?

The UK Coalition Government explains that the Westminster *2013 Act* is intended to deliver a long-term sustainable model for public service pensions.

However, there have been criticisms about the length of time it will take for the full extent of the foreseen savings to be realised. It is argued this may undermine the current reform package before it has matured.

At present there is a growing annual cash deficit between benefits in payment and contributions paid by members. In 2005/06 the difference was around £200m for the United Kingdom – by 2010/11 the difference had grew to £5.6bn, and is expected to reach £15.4bn by 2016-17.[82] It is argued that the scale of this shortfall, particularly

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[79] Northern Ireland Public Service Pension Reform, Consultation on proposals to Reform Public Service Pensions from April 2015, 20 May 2013 (http://www.dfpni.gov.uk/civilservicepensions-ni/index/latest-news/public_service_pensions_bill.htm)

[80] Northern Ireland Public Service Pension Reform, Consultation on proposals to Reform Public Service Pensions from April 2015, 20 May 2013 (http://www.dfpni.gov.uk/civilservicepensions-ni/index/latest-news/public_service_pensions_bill.htm)

[81] On 19 June 2013, DFP indicated to CFP staff that additional analysis would be available shortly, possibly 28 June 2013.

[82] The Approaching Cash Flow Crunch, Centre for Policy Studies, Michael Johnson, 5 November 2012

within a period of austerity in public expenditure, will result in irresistible pressure for further reform, with more immediate savings needing to be delivered.

The IPSPC pre-empted this criticism in their Final Report:

> *The widely used net cash expenditure figure (the gap between current contributions received and current benefit payments) is not an appropriate measure. As well as being inherently volatile, it is a mismatch between contributions made in respect of future benefits and payments of previously accrued benefits, and so provides no insight into long-term affordability.*[83]

The key point here is to recognise the current reform proposals (as reflected in the recently introduced NI Bill) are aimed at a long-term rebalancing of the cost of public service pensions, and are not designed to totally achieve this in the short-term.

4.4 Sustainability of reforms rests upon a number of assumptions

Prior to the reforms implemented by the UK Coalition Government, the net cost of public service pensions (i.e. the cost of paying benefits less payments received from employees) would have risen to around 2.0% of GDP until the late 2020s, and then fell steadily to around 1.5% of GDP by 2055. The move to up-rating by CPI rather than RPI should save another 0.4% of GDP by 2061/62; and in the increase in members contributions will save another 0.1% of GDP by 2061/62. Finally, the current reform proposals are predicted to result in a further saving of 0.1% of GDP by 2061/62. The consequence of all this is that by 2061/62 the net cost of public service pensions should fall to around 0.9% of GDP.[84] The gross cost (i.e. the figure before netting off member contributions) is estimated to be around 1.3%.[85]

However, these calculations rest upon a number of assumptions – for example, the Office of Budgetary Responsibility (OBR) assume GDP growth of 2.2% per year.[86] Should this assumption not hold true, then the cost of public service pensions as a proportion of GDP would be higher.

Lord Hutton himself has suggested that this forecast might no longer be accurate as a result of the worsening outlook for the UK economy.[87] However, the Institute of Fiscal Studies (IFS) Green Budget has argued:

> *It is true that national income is now expected to be lower going forwards, thereby increasing projected spending as a share of national income via the reduced denominator. However, it is also the case that projected spending in cash terms (the numerator) is also likely to be reduced as a result of two*

[83] IPSPC Final Report, 10 March 2011
[84] OBR Fiscal Sustainability Report, July 2012, Chart A.5
[85] OBR Fiscal Sustainability Report, July 2012, 3.47
[86] OBR Fiscal Sustainability Report, July 2012, pg 7
[87] See Lord Hutton's interview on 'The World This Weekend', BBC Radio 4, 4 December 2011 (reported at http://www.bbc.co.uk/news/uk-politics-16022001 and http://www.bbc.co.uk/news/uk-16021345).

> *policies announced by the Chancellor, George Osborne, in his Autumn Statement: first, the additional squeeze on public sector pay in 2013–14 and 2014–15 (since lower pay will automatically lead to lower defined benefit pensions); and second, the additional reduction in the size of the public sector workforce that will likely arise as a result of the additional spending cuts planned for 2015–16 and 2016–17. Given the scale of these two policies, it seems unlikely that future spending on public service pensions as a share of national income would actually now be higher than it was forecast to be prior to the Autumn Statement.*[88]

Another area of uncertainty is the impact that the reforms may have upon the numbers of staff who elect to opt-out of a pension scheme with the public service employer. At present, it is estimated that around 15% of public service employees opt-out of their public service pensions, with variation in the actual rate between the various schemes.[89] Should the reforms prompt a change in this opt-out rate:

> *A higher opt-out rate would increase net government expenditure on public service pension schemes in the short-term as the Government must pay existing pensions while collecting a lower amount of contributions. However, in the long-term, a higher opt-out rate reduces net government expenditure on public service pensions as fewer pensions must be paid. A lower opt-out rate would have the exact opposite effect.* [90]

In summary, should the assumptions underpinning much of the economic analysis underlying the public service pension reform proposals not hold, the Government may be forced to revisit this area in the near future. The IFS note:

> *The Chief Secretary to the Treasury, Danny Alexander, has stated that one of the government's objectives is 'to put in place schemes that can be sustained for decades to come'. But similar claims were made by the then Trade and Industry Secretary, Alan Johnson, when implementing the last reforms, so it remains to be seen whether we really have reached the end of the line on public service pension reform.*[91]

Should this be the case, NI would have to revisit the issue also.

[88] IFS Green Budget 2012 (http://www.ifs.org.uk/budgets/gb2012/12chap5.pdf)
[89] PPI, A Pensions Policy Institute Briefing Paper on the impact of the Coalition Government's public service pension reforms, pg 14
[90] PPI, A Pensions Policy Institute Briefing Paper on the impact of the Coalition Government's public service pension reforms, pg 14
[91] IFS Green Budget 2012 (http://www.ifs.org.uk/budgets/gb2012/12chap5.pdf)

4.5 Equality Considerations of Public Service Pension Reform

DFP's equality screening exercise resulted in the decision to screen out the policy for a full Equality Impact Assessment (EQIA).[92] Equality dimensions were explained by the Department as follows:

> *With regard to age, it was determined that that was mitigated through the transitional protection measures that are included in the Bill. Also, the policy reflects the Government's approach of removing default pension ages to address trends in longer life expectancy and historical inequalities. Newer, younger staff have higher pension ages than the older staff because of the reform of schemes in the past. In relation to the gender issue, there is the issue of longer life expectancy of women. That is partially mitigated by trends of longer life expectancy in general, but, importantly, although women are expected to live longer, in the public service, men typically earn more. In introducing the career average schemes, higher earners will continue to receive higher pensions, but with a fairer, more proportionate method of calculation.* [93]

This approach was challenged in broad terms by trades union responses to DFP's consultation on the Bill, which called for a full EQIA and consideration of equality impacts in more detail[94] - for example, on women with caring responsibilities,[95] - or particular areas of employment (such as firefighters), who are less likely to maintain a level of operational fitness to age 60.[96]

In the absence of a detailed EQIA for the NI process, this section briefly considers some of the issues raised in the equivalent process in GB, which may provide indicators for potential issues in NI. **However, a direct read-across should not be assumed**. The NI Civil Service differs in some respects to its GB counterpart: 49.8% female compared with 53%; 0.2% minority ethnic compared with 9%; 5.3% with a

[92] Department of Finance and Personnel (2013), Screening Flowchart and Template for the Public Service Pensions Bill: http://www.dfpni.gov.uk/public-service-pensions-bill-equality-screening-document.pdf.

[93] Department of Finance and Personnel evidence to the Committee for Finance and Personnel 24 April 2013: http://www.niassembly.gov.uk/Assembly-Business/Official-Report/Committee-Minutes-of-Evidence/Session-2012-2013/April-2013/Public-Sector-Pensions-Bill--Consultation-Responses/.

[94] For example, Northern Ireland Public Services Alliance (2013), *Northern Ireland Public Service Pensions Reform: Response of the Northern Ireland Public Services Alliance*, April 2013, p.12: http://www.nipsa.org.uk/NIPSA/media/NIPSA/PDFs/Campaigns/Pensions/Consultation-on-Proposals-to-Reform-Public-Service-Pensions.pdf.

[95] Irish National Teachers Organisation (2013), *Northern Ireland Public Service Pensions Reform: Response of the Irish National Teachers Organisation*, p.3: http://www.into.ie/NI/Teachers/IssuesforTeachers/ResponsetoProposedReformstoPublicServicePensionsApril2013/INTOResponse_ProposedReformsToPublicServicePensions_April2013.pdf.

[96] Irish Congress of Trade Unions Northern Ireland Committee (2013) *Northern Ireland Public Pensions Reform Response of the Trade Union Side*, April 2013, p.8: http://www.niassembly.gov.uk/Documents/Finance/Inquiries/Public%20Service%20Pensions%20Bill/TUS%20Response%20to%20Public%20Service%20Pension%20Reform%20(April%202013).pdf.

declared disability compared with 8%; and, the age profile is broadly younger in NI than in GB.[97]

Additionally, equality impacts in GB and in NI have been considered in relation to the civil service as a whole, rather than using data relating specifically to pension scheme membership. A further dimension to be considered is that there is no detailed study of differential impacts across different areas of public service (such as teachers, health service workers and police officers, all of which have different staff profiles).

HMT considered impacts in relation to proposals to change public service pensions. This analysis made the following observations in relation to the different components of the plans (again, however, a direct read across should not be assumed):

- General impact – Provisions may impact on persons differently by virtue of their age and gender;
- Transition – Only older members will benefit from transitional arrangements; men are over-represented in older age groups;
- Linking Normal Pension Age to State Pension Age – Women live longer, so will receive more pension in the long run, but men's salaries progress faster, so they will have a higher value pension; younger people will pay more over their lifetime, but their life expectancy will be longer in which to receive benefits;
- Career Average Revalued Earnings – benefits those on a lower salary growth, which means more women, minority ethnic groups and people with disability will benefit; (Further information on this is available at sub-section 4.7)
- Cost control mechanism – All groups are equally affected; and,
- Reform of smaller schemes – No differential impact. [98]

The Cabinet Office considered impacts in relation to the proposed Principal Civil Service Pension Scheme 2015. In general terms, the following equality impacts were noted (whilst again recognising a direct read-across cannot be assumed):

- Career average – Women and those with a declared disability are likely to benefit;
- Accrual rate/indexation – Benefits earned in a short early career will be less than the same period of service nearer retirement;
- Linking the National Pension Age to the State Pension Age – Younger scheme members are affected more than older members, but this is offset by improved life expectancy;
- Member contribution rates – Further consideration of the impacts is needed;

[97] All figures from Department of Finance and Personnel (2012), *Equality Statistics for the Northern Ireland Civil Service*, Belfast: DFP, pp.4-6: http://www.nisra.gov.uk/publications/NICS%20Equality%20Report%202012.pdf; and Cabinet Office (2012), *Principal Civil Service Pension Scheme 2015 – Equality Impact Assessment*, London: Cabinet Office, pp.9-11: http://www.civilservice.gov.uk/wp-content/uploads/2011/12/120906-2015-EIA-doc-FINAL-2.pdf.

[98] HM Treasury (2012), *Public Service Pensions Bill: Central Equalities Impact Assessment*, London: Cabinet Office.

- Death in service lump sum – There will be greater impact on those with a serious health condition; further consideration is needed; and,
- Ill-health benefits – For those transferring from a Classic scheme to the 2015 scheme, benefits will be lower for conditions preventing work in the current role, but higher for conditions that prevent any form of work. [99]

In general, in addition to differentiating impacts across different areas of public service indicated above, two equality-related areas of potential impact not indicated in the literature are impacts on people whose careers are interrupted, such as to raise a family, and the effect of the proposals on part-time workers. Both of these dimensions predominantly affect women.

4.6 Human Rights considerations

The Bill (as introduced) engages rights enshrined in the *European Convention on Human Rights* (*ECHR*): they are:

- Article 1, Protocol 1 – Peaceful enjoyment of possessions - Refer to Appendix 1 for a fuller explanation of this Article in this context; and,
- Article 14 – Prohibition against discrimination - Refer to Appendix 2 for fuller explanation of this Article in this context.

This sub-section sets out human rights considerations arising from the following clauses of the Bill:

- Revaluation (Clause 9);
- Pension Age (Clause 10);
- Employer Cost Cap (Clause 12);
- Closure of Existing Schemes (Clause 19);
- Other Procedure (Clause 24); and,
- Additional Considerations to arise from secondary legislation.

Each is explained in the below paragraphs.

Revaluation (Clause 9)[100]

When explaining this same clause in relation to the Westminster Bill, Treasury notes that the Clause:

> *…provides that the pensionable benefits of active members are revalued year on year in accordance with scheme regulations, which will make reference to a rate set by the Treasury determining the general change in the level of prices or earnings. In the rare case that the general rate of prices and/or earnings falls, revaluation will take place according to a*

[99] Cabinet Office (2012), *Principal Civil Service Pension Scheme 2015 – Equality Impact Assessment*, London: Cabinet Office.
[100] Ibid, pgs 4- 5, paras 12-15

negative percentage, which will have the effect of shrinking the value of the benefits already built up by an active member. There is potential for argument that a revaluation could constitute an interference with property within the meaning of Article 1 Protocol 1, if the potential to accrue a larger pensionable benefit could be considered to be a 'possession', although as the possibility for negative revaluation is an inherent part of the pension benefits as they are earned this may be hard to sustain. The same issue arises in respect of clause 27, which makes applies the provisions of clause 8 to new pension schemes made by other public bodies.

Treasury also argues:

There is a legitimate aim. The element of revaluation in a career average revalued pension is designed to preserve the value of the pension within the context of the overall scheme cost while maintaining the balance of fairness between scheme members and taxpayers. Different schemes have done this in different ways, but the central method has been to adjust the value of the pension to reflect changes in prices or earnings, so that it represents a realistic source of income to the pensioner when compared to the market in which that income is to be spent. This clause as drafted achieves that aim, as the value of the pension is directly linked to the value of prices or earnings, and the purchasing power of the pension is also directly linked to the value of prices or earnings, so it maintains its level of purchasing power in the market. To restrict the revaluation to a positive percentage only would result in public service pensions benefitting from a rise in prices or earnings, but being insulated from a fall in prices and/or earnings to the detriment of the taxpayer, who would be expected to fund the shortfall. To more directly link the revaluation to the actual changes in prices and/or earnings removes this disparity and provides a more fair balance between the interests of the scheme member and those of the taxpayer.

Treasury further maintains that:

The proposed direct link between revaluation and fluctuations in the level of prices or earnings, to include falls in those levels, strikes a fair balance between the interference to possessions and the legitimate aims of public service pension reform set out [earlier in relation to pensionable benefits]. This will not interrupt or remove any pension or other benefits in payment, nor will it prevent scheme members from continuing to accrue pensionable benefits. It is justified by the need to address rising longevity and the rising costs of public service schemes in addition to the matters noted when considering legitimate aims above.

In terms of legitimate expectation, the proposed changes do not amount to a barrier to effective enjoyment of pensions. The clause is clear in its effect, and the only legitimate expectation can be for the pension to be revalued with reference to the rise or fall of prices or earnings at the time of revaluation. There is no legitimate expectation that pensions will only be revalued upwards: all public statements on this policy have confined themselves to saying that pensions would be revalued according to an appropriately chosen index without making any commitment to upward only revaluation.

At the time of compiling this Paper, CFP invited the Northern Ireland Human Rights Commission (NIHRC) to provide a briefing on the Bill, which could address the considerations outlined above, indicating whether in the NI context, it concurs with Treasury's view.

Pension Age (Clause 10)[101]

When explaining this same clause in the Westminster Bill, Treasury notes that the Clause:

> ***…****mandates that the normal pension age for schemes must equal the state pension age, except for the police, firefighters and armed services [*the last not included in NI Bill]*. A change in state pension age would mean that scheme members would be able to take only their full pensions accrued under the new schemes at an earlier or later age – although, as now, scheme members may choose to take their pensions earlier or later than normal pension age with an actuarial adjustment. This change would apply to all pensionable benefits accrued under the scheme, including those which accrued prior to the change in state pension age. It will not apply to benefits accrued under current pension schemes, but only to those accrued in schemes set up under the Bill. Similar provision is made in clauses 27 and 29 (which make similar provisions mandating this scheme feature in new pension schemes made by other public bodies, and enabling existing schemes to adopt it) and clauses 31 and 32 (which make similar provisions enabling Parliamentary and other pension schemes to adopt this scheme feature).*

Treasury argues that:

> *This may constitute an interference with property within the meaning of Article 1 Protocol 1, as pensionable benefits that have been accrued are likely to be property within the meaning of that Article. However, it could be argues that all benefits accrued are subject to the link between normal pension age and state pension age, and so it could be said that there is no expectation to take full pension at a specific age: the expectation is that full pension will be taken at the then prevailing state pension age. In the event that there was any interference, a lowering of state pension age would be beneficial and any adverse interference would arise only if the level of state pension age rose.*

But Treasury asserts that:

> *In the event that Article 1 Protocol 1 is engaged, it could also be argued that there is a legitimate aim, which was set out by the Independent Public Service Pensions Commission, chaired by Lord Hutton...*
>
> *The proposed link between normal pension age and state pension age arguably strikes a fair balance between any interference with possessions and the legitimate aims of public service pension reform, in particular the aim of managing longevity risk in a way that is fair to scheme members and*

[101] Ibid, pg 5-7, paras 16-21.

> *the taxpayer. The link will not interrupt, remove or reduce any pension or other benefits in payment, nor will it prevent scheme members from continuing to accrue pensionable benefits. It is an inherent feature of any benefit accrued under the new schemes that it was accrued subject to the condition that the full pensionable benefit can only be drawn at state pension age, whatever state pension age may be. The clause is explicit at subsection (4) that any change to state pension age will change the nature of the accrued benefits, and that feature has been built in from the moment any benefits begin to be accrued.*

Treasury states:

> *The clause will not affect any benefits already built up in existing schemes which do not have that inherent feature. In the event that pension age changes it is correct that a scheme member will be unable to draw a full pension at the earlier age, because their pensionable benefits will always have been subject to this condition. As noted at paragraph 5(c) above, increasing longevity for those public servants who choose to work a full career, as well as the availability of flexible retirement and transitional arrangements, will lessen the impact upon those scheme members who are affected by any such change.*

But Treasury also observes that:

> *…the Government is mindful of the fact that changes to state pension age may be based on considerations which are not directly determined by the new public service schemes. Any changes to state pension age will be made by primary legislation. The Government may consider at that point whether provisions which soften the impact of change upon those closest to being affected in public service pension schemes (such as a tapering effect protecting some scheme members from the full impact of change) could be implemented in order to ensure a fair balance between the impact on individual scheme members and the aim of managing increasing longevity with the consequent impact on scheme costs.*

Treasury states:

> *The exception for active members of police forces, firefighters, and armed forces* [the last not included in NI Bill] *may also amount to discrimination within the meaning of Article 14, as they take pension at a different and lower normal pension age, set at 60. However, the reason that they are entitled to this normal pension age is in recognition of the unique characteristics of their work, which is not listed as a protected ground in Article 14 and may not come within the meaning of "other status". In the event that these scheme members cease to carry out this type of work, and become deferred members, they do not benefit from the exception. In the*

case that Article 14 is engaged, any discrimination can be justified. Government policy in this regard accepts the rationale set out in the independently produced Hutton Report, which concluded that "in the case of [the armed forces, police, and firefighters] where the Normal Pension Age should be set to reflect the unique characteristics of the work involved. The Government should therefore consider setting a new Normal Pension Age of 60 across [the armed forces, police and firefighters], where the Normal Pension Age is currently below this level in these schemes, and keep this under regular review".

Treasury maintains that:

In terms of legitimate expectation, it is not considered that the link between state and normal pension age in schemes set up under the Bill amounts to a barrier to effective enjoyment of pensions. The amount of unreduced pension earned in the new schemes is not altered; it simply cannot be accessed until a later date than first envisaged, and the cost of any delay will be offset by the payment of pensions over the course of a typical scheme member's increased life expectancy. The Courts have previously considered similar situations where the terms attaching to accrued pension rights have changed, and reiterated the wide margin of discretion to be afforded to the Government in these situations:

(a) In respect of a claimed legitimate expectation to have public service pensions up- rated in accordance with the Retail Prices Index, the Court stated "absent a clear and unequivocal promise to the contrary, the only legitimate expectation is that the beneficiaries will be treated in accordance with whatever is the lawful policy in place at any particular time" and "the more far reaching are the consequences of holding Government to the promise, the easier it will be for the Government to establish that the countervailing public interest is sufficiently strong to justify the promise being overridden.

(b) When considering the up-rating of General Practitioners' pensions, the Court ruled that any legitimate expectation to future changes attaching to an Article 1 Protocol 1 property right was capable of being proportionately interfered with by Ministers at the 'macro' level making decisions affecting large sums of public money.

At the time of compiling this Paper, CFP invited the Northern Ireland Human Rights Commission (NIHRC) to provide a briefing on the Bill, which could address the considerations outlined above, indicating whether in the NI context, it concurs with Treasury's view.

Employer Cost Cap (Clause 12)[102]

When explaining this same clause in the Westminster Bill, Treasury notes that the Clause:

> *… provides for the establishment of an 'employer costs cap'. If in the future scheme costs move beyond certain margins around this cap, as set by the Treasury, scheme regulations will take steps to bring costs back towards that level. This will be done by changing accrual rates for future benefits, adjusting member contribution levels, or some other adjustment or combination of adjustments. If an increase in scheme costs means that these adjustments need to be made, it might potentially be an adverse interference with possessions within the meaning of Article 1 Protocol 1, depending upon the facts as they are at that time. However, it is very unlikely that any interference with possessions will arise in the event that, as intended, no adjustments are made to benefits already accrued. The paragraphs below cover the hypothetical case that such an amendment is made, and should be viewed in this context. The cap mechanism will be symmetrical, so that any savings from a reduction in scheme costs can be returned to scheme members in the form of increased benefits, lower contributions, or otherwise. The same issues arise in respect of clause 27, which makes similar provision for new pension schemes made by other public bodies.*

Treasury maintains that:

> *There is a legitimate aim. The Independent Public Service Pensions Commission recommended a wholesale reform of public service pensions, for reasons including the current unfair sharing of costs between the employer, the employee, and the taxpayer. The Commission considered cost capping as a part of reform, and recommended "The Government, on behalf of the taxpayer, should set out a fixed cost ceiling: the proportion of pensionable pay that they will contribute, on average, to employees' pensions over the long term. If this is exceeded then there should be a consultation process to bring costs back within the ceiling, with an automatic default change if agreement cannot be reached." The Government agrees with and has adopted this assessment, on the basis that it represents a fair balance of risk between scheme members and the taxpayer in the event that scheme costs rise.*

Finally, Treasury states that:

> *The proposed cost cap strikes a fair balance between the interference to possessions and the legitimate aims of public service pension reform. It is*

[102] Ibid, pgs 7- 8, paras 23-25.

clearly in the interests of members that public service pension schemes remain affordable and viable (in order that they are able to take the pension that they have accrued), and it is clearly in the interest of the taxpayer that they should not bear alone the full risks of changes in the costs of public service schemes. The proposed cost cap incorporates a level of flexibility in that it (a) allows for costs to diverge from the cap within an effective margin before action is required, allowing schemes an opportunity for internal reform to keep costs under control, (b) provides a mechanism to allow all stakeholders the opportunity to agree on a method of adjusting costs in the event that this margin is breached, and (c) includes a final backstop to combat an unsustainable change in costs in the event that agreement cannot be reached.

At the time of compiling this Paper, CFP invited the Northern Ireland Human Rights Commission (NIHRC) to provide a briefing on the Bill, which could address the considerations outlined above, indicating whether in the NI context, it concurs with Treasury's view.

Closure of Existing Schemes (Clause 19)[103]

When explaining this same clause in the Westminster Bill, Treasury notes that the Clause:

***…**prevents scheme members from accruing any further rights in their existing schemes subject to exceptions for those who are closest to retirement. Similar provisions for closure of pension schemes made by other public bodies are made in clause 28.*

However, Treasury maintains that:

…this clause does not engage Article 1 Protocol 1 because this Article does not guarantee a right to acquire further possessions such as benefits in the current pension schemes. Nor is there any discrimination on the grounds of age under Article 14 (as under current transitional plans the younger members of the scheme will be affected more by the changes) as Article 14 cannot apply in isolation. In any event, it is considered that any discrimination within the meaning of Article 14 can be justified. Younger members are likely to live longer than their older counterparts, and their extra longevity will balance out the higher age of retirement. They have more time to plan for retirement, and so have a greater flexibility ...In the majority of schemes, a taper will smooth the effects over those who are unable to benefit from full transition.

[103] Ibid, pgs 8-9, para 26

At the time of compiling this Paper, CFP invited the Northern Ireland Human Rights Commission (NIHRC) to provide a briefing on the Bill, which could address considerations outlined above, indicating whether in the NI context, it concurs with Treasury's view.

Other Procedure (Clause 24)[104]

When explaining this same clause in the Westminster Bill, Treasury notes that the Clause:

> ***…****allows for scheme regulations to contain provisions with retrospective effect. Such powers are common features of pension schemes, and feature in the enabling powers for the existing pension schemes. They are commonly used to update schemes to reflect changes in membership, tax, or general pensions law, and allow for administrative convenience in making such changes. The clause itself does not make any retrospective changes, but allows for such changes to be made in the future. In the absence of knowledge of what changes will be proposed, and in what circumstances, it is very difficult to quantify any potential interference with [ECHR] rights. However, some general points may be made.*

Treasury argues that:

> *Any deprivation of possessions, or interference with their peaceful enjoyment, arising from a retrospective change must be justified within the meaning of Article 1, Protocol 1. This would be a high standard to discharge. The Courts have in the past intervened to prevent retrospective changes to such rights. For example, when considering the up-rating of GPs' pensions, the Court ruled that there was an enforceable legitimate expectation in relation to past service (therefore preventing retrospective changes). Any proposal for a retrospective change would be made in the knowledge that the government could expect the protections of Article 1 Protocol 1 to be strictly policed by the Courts (and scheme members would be able to obtain a swift and direct remedy), notwithstanding the margin of appreciation afforded to the Government in the fields of social and economic policy.*

Treasury further maintains that:

> *There is the potential for Article 14 to apply to retrospective changes, but it is nearly impossible to assess the extent of any discrimination in the abstract. While the reforms are blind to protected characteristics such as age or gender, there is a potential for greater impact (and indirect discrimination) upon older members of schemes (who will be affected most*

[104] Ibid, pgs 9-10, paras 27-30

by retrospective changes as they have the largest entitlements) and female and ethnic minority members (who as a whole are over-represented in the public sector). However, given the strict tests required to ensure that proposed retrospective changes do not breach Article 1 Protocol 1, it is unlikely that any measure which could pass those tests would not also carry sufficient justification and proportionality to satisfy Article 14.

Finally, Treasury notes that:

[the provisions] place additional protective measures on retrospective changes that might adversely affect the pensionable benefits of scheme members:

(a) in clause 20, which requires proposals for such changes to be subject to an enhanced consultation process, undertaken with a view to reaching agreement, and resulting in a report to Parliament upon the consultation; and

(b) in clause 21, which requires such changes to be made in regulations under the affirmative procedure (as defined in clause 34) and subject to greater Parliamentary scrutiny.

At the time of compiling this Paper, CFP invited the Northern Ireland Human Rights Commission (NIHRC) to provide a briefing on the Bill, which could address the considerations outlined above, indicating whether in the NI context, it concurs with Treasury's view.

Additional considerations to arise from secondary legislation[105]

There are additional human rights considerations arising from provisions that are not included in the Bill; but are included in existing legislation pertaining to current schemes, which provide additional protection to members of those current schemes. They will be addressed in secondary legislation.

In its Memorandum to the Houses of Parliament Joint Committee on Human Rights about the Westminster Bill, (which the NI Bill largely mirrors), Treasury describes these legal protections as including, amongst other things: [106]

(a) Consent locks, where a change cannot take place without the consent of scheme members.

(b) Opt in provisions, where a change cannot affect an individual scheme member until they have indicated their willingness (often by a set procedure) for it to apply.

[105] Ibid, pg 10, paras 31-33
[106] Ibid, pg 10, para 31

> *(c) Opt out provisions, where a scheme member in certain circumstances (and often by a set procedure) opt that the change not apply to them.*

Treasury argues that the lack of such provisions in the new schemes to be established under the Westminster *2013 Act* does **not** constitute an interference with possessions under Article 1, Protocol 1. (Refer to Appendix 1 for an explanation of Article 1, Protocol 1 in this context.)

In light of the above, Treasury maintains that any actual or potential future interference arising from the *2013 Act* is lawful, proportionate and justified. It further asserts that:[107]

> *These features, and any rights which accrue as a result of them, are features of the existing schemes, and Article 1, Protocol 1 does not guarantee an open-ended right to acquire further possessions such as benefits in the current pensions schemes. Features of other, pre-existing, schemes will not transfer across to the new schemes set up under the [Westminster] Bill.*

At the time of compiling this Paper, CFP invited the Northern Ireland Human Rights Commission (NIHRC) to provide a briefing on the Bill, which could address the considerations outlined above, indicating whether in the NI context, it concurs with Treasury's view.

4.7 Need to ensure schemes' members understand the value of their entitlement

As noted above, the IPSPC identified transparency and simplicity as one of the key principles by which public service pension reform should be measured.

However, the closure of final salary schemes and their replacement with CARE pension schemes, when combined with the principle of protecting accrued rights, may impair the transparency and simplicity of some member's pension entitlement. Their pension will be made up of two components – one part calculated against final salary, and one part calculated against career average revalued earnings. It is obviously important that scheme members are able to understand how their pension entitlement will be calculated to better enable them to plan for their future. Therefore, Members may be interested in exploring how DFPs plans to inform scheme members of the status of their pension following implementation of the reforms contained in the recently introduced Bill.

4.8 The effects of reform on low-paid scheme members

The consequences of the current reforms will not impact upon all public service pension scheme members equally. Furthermore, the proposed reforms may accentuate the premium public service employees receive in contrast to private sector employees. The shift to CARE benefits those who experience low pay growth during

[107] Ibid, pg 10, para 32

their careers relative to those who experience more significant pay growth. The IFS note:

> *On average, graduates in the public sector experience higher pay growth over their lifetimes than those with low levels of education…final salary schemes are found to be more generous, on average, to those with higher levels of education. However the career average scheme…is found to have similar levels of average pension accrual across each education group.*[108]

Therefore, the IFS conclude that whilst:

> *these reforms will significantly reduce the generosity of these pensions for many public sector workers…we expect there to be a substantial group of lower-paid public sector workers for whom the new schemes will be even more generous than those they are replacing.*[109]

The Pensions Policy Institute (PPI) has produced work which supports this claim:

> *The individual impact of the reforms on the value of the pension benefit available to a particular scheme member will be influenced by a wide range of factors including: the member's age and salary when the reforms are introduced, their salary progression and whether they leave public service early or stay in the scheme until they retire…*
>
> *The coalition's proposed reforms will remove the different outcomes for high-flyers and low-flyers which exist in final salary schemes…under the Coalition Government's proposed reforms high-flyers and low-flyers have a pension benefit worth the same percentage of salary, with the average value of the pension offered being worth 15%*[110] *of salary for both members.*
>
> *After the Coalition's proposed reforms the value of the pension received by lower earners will be higher as a percentage of their salary than that of higher earners, as higher earners must pay higher contributions for the pension they receive, compared to low earners.*[111]

The IFS place this within the context of their comparison of pension provision and pay in the public sector against that of the private sector, observing:

[108] IFS Green Budget: February 2012, pg 107

[109] IFS Green Budget: February 2012, pg 108

[110] The paper produced by the PPI measured schemes by their Effective Employee Benefit Rate (EEBR). The EEBR is calculated by translating the value of a pension benefit into an equivalent percentage of salary that the scheme member would need to receive to compensate for the less of the pension scheme. The EEBR is presented net of member contributions, so if the benefit structure was worth 20% of a member's salary, but they contributed 5% of their salary to the pension scheme the EEBR would be 15%.

[111] PPI, A Pensions Policy Institute Briefing Paper on the impact of the Coalition Government's public service pension reforms, pg 12

Public sector workers will continue to accrue pensions that are dramatically more generous than those accrued, on average, by private sector employees, few of whom have access to a defined benefit pension. Those in the private sector least likely to have access to good employer provision are those on relatively low pay. Yet this is the group in the public sector for whom the reformed schemes are likely to be more generous than the final salary schemes they are replacing. [112]

The PPI paper also considered the benefits offered by the main UK schemes compared to pensions offered in the private sector and concluded:

…even after the Coalition's proposed reforms the benefit offered by all four of the largest public service pension schemes remains more valuable, on average, than the pension benefit offered by Defined Contribution (DC) schemes that are now most commonly offered to employees in the private sector, into which employers typically contribute around 7% of a DC scheme member's salary.

…A typical Defined Benefit scheme in the private sector has an average pension benefit value of 23% of a member's salary, assuming that the scheme benefits are linked to Consumer Prices Index (CPI). Some private sector schemes still have benefits linked to the Retail Prices Index (RPI), and for a typical private sector Defined Benefit scheme linked to RPI the average value of the pension benefit is 27% of a member's salary. [113]

This outcome may provoke arguments that public service pensions need to be further reformed in order to be better aligned with private sector pensions. The IPSPC refuted this, claiming this sort of 'race to the bottom' would not be beneficial to society. This argument was supported in the *Financial Times*:

The real problem here is not that public sector pensions will, even after these reforms, remain far too generous. It is that private sector ones have become far too mean. The only way in practice to have achieved parity would have been to indulge in a "race to the bottom" that Lord Hutton specifically rejected. And such a race to the bottom would be in no one's interest, producing, in the long run, only a larger reliance on state benefits. Those business voices urging the government to go further in cutting public sector pensions should instead be working with it to find ways to improve private sector ones - pensions for which people will have to work longer and pay more but which need, in the private sector, to be more generous. [114]

[112] IFS Green Budget: February 2012, pg 108

[113] PPI, A pensions Policy Institute Briefing Paper on the impact of the Coalition Government's public service pension reforms, pg 5

[114] Nicholas Timmins, 'High-wire act fails to balance public and private schemes', Financial Times, 11 March 2011

4.9 Consultation – Regulatory Impact Assessment

Within the Summary of the Regulatory Impact Assessment in the Explanatory and Financial Memorandum which accompany the Bill when introduced, DFP state:

> *The Bill will not impact on business, the voluntary sector or the environment. It has not therefore been subject to a regulatory impact assessment.*[115]

Given that the Bill is implementing such significant and long-lasting societal change, it seems unlikely that it will not impact upon businesses or the voluntary sectors.

For example, the requirement to work longer until receiving a public service pensions may reduce job-opportunities for the young. This would have an impact upon the local jobs market.

More specifically, one of the aims of the reforms is to increase the mobility of employees between the public and private sectors. This may increase the ability of private and voluntary sector groups to compete for the delivery of particular services. The Bill will do this through an extension of the 'Fair Deal' policy. Fair Deal is a non-statutory policy, introduced in 1999, which covers staff compulsorily transferred from the public sector.[116] The policy 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.[117]

Under the old Fair Deal arrangements, the new employer was required to offer transferring staff membership of a scheme which was "broadly comparable" to the one they were leaving. This was considered to be a barrier to mobility, as often the cost of providing a "broadly comparable" pension posed significant costs to a business or voluntary sector group. The Bill, as introduced, extends Fair Deal by allowing outsourced employees to remain members of their public service pension schemes. The Explanatory and Financial Memorandum states:

> *The current Fair Deal policy is due to be amended to allow people under the above circumstances to retain access to their public service pension before the new schemes are introduced. Due to the restrictions on access to the PCSPS(NI), the new Fair Deal policy could not apply without a change to the primary legislation. Schedule 9 aims to make this change to allow access to people who are not currently entitled to access under the 1972 Order. The Schedule will come into force on Royal Assent, to ensure*

[115] http://www.niassembly.gov.uk/Documents/Legislation/Bills/Executive-Bills/session-2012-2013/Public_Service_Pension_Bill_EFM%20-%20As%20Introduced.pdf

[116] HC Deb, 14 June 1999, c 29-30W

[117] HM Treasury, Consultation on the Fair Deal Policy: treatment of pensions on compulsory transfer of staff from their public sector, 2011.

> *that the new Fair Deal policy can be implemented in relation to the PCSPS(NI) with immediate effect. Any delay may mean that staff who are being moved out of the civil service could miss the opportunity to remain in their current pension arrangements and delay progress of improvements to public service delivery.*[118]

Therefore, it seems **too early** to state that this Bill will have no impact upon the business or voluntary sector.

5 Conclusion

The Bill was prompted by the enactment of the *2013 Act* in Westminster. The *2013 Act* is intended to deliver public service pensions which are more sustainable, affordable and fairer than those which currently exist. The reforms create public service pensions schemes that are more in tune with the current demographic profile of the UK and with the evolving nature of public service delivery.

Deviations from the *2013 Act* that involve additional costs will adversely affect the Block Grant. It is argued that there is little scope for variation in the passing of this primary legislation, but there will be greater scope when it comes to secondary legislation dealing with the terms of specific schemes. (This has been discussed at section 2.1.1.)

Finally, the UK Coalition Government intends for these reforms to deliver a sustainable public service pension for at least the next 25 years. However, their predictions are based upon a number of assumptions, which may or may not hold. It is therefore not certain whether this Bill will deliver the required long-term reform which is deemed necessary to create a stable public service pension landscape. After all, as the IFS point out, the previous Labour Government presented their reforms as delivering a long-term solution to affordability issues.[119] Yet eight years later,. we are engaged in another round of significant reforms. It remains to be seen whether we have reached a period of long-term stability in this area.

[118] http://www.niassembly.gov.uk/Documents/Legislation/Bills/Executive-Bills/session-2012-2013/Public_Service_Pension_Bill_EFM%20-%20As%20Introduced.pdf

[119] IFS Green Budget: February 2012, pg 109

Appendix 1 - Article 1 Protocol 1 – Peaceful enjoyment of possessions

Article 1 Protocol 1 can be summarised as follows:[120]

[It] provides that every natural or legal person is entitled to the peaceful enjoyment of his possessions; and that no-one shall be deprived of his possessions, except in the public interest and subject to the conditions provided for by law and by the general principles of international law.[121]

Deprivation of possessions or interference with their peaceful enjoyment may be justified if they:

(a) are subject to conditions provided for by law;

(b) are for a legitimate aim in the general interest; and,

(c) strike a fair balance between the rights of the owner of possessions and the public interest: in striking a fair balance any interference with the right must be reasonable and proportionate to the legitimate aim pursued.

Case law reveals that: [122]

Pensionable benefits that have already been earned or accrued (through length of service, payment of contributions, or otherwise) are widely accepted to be 'possessions' within the meaning of Article 1, Protocol 1[R (Carson) v Secretary of State for Work and Pensions [2005] UKHL 37], although the exact nature of the benefits that have been earned or accrued requires careful examination of the [relevant] facts.

Article 1, Protocol 1 also extends to the legitimate expectation of obtaining effective enjoyment of a possession. [Kopecky v Slovakia, App No 44912/98, Judgement of 28 September 2004] However, Article 1, Protocol 1 does not guarantee an open-ended right to acquire further possessions such as benefits in the current pension schemes.[Markx v Belgium [1979] 2 EHRR 330] The general principles applied by the Courts in deciding whether interference with possessions is lawful are [Hutten-Czapska v Poland (2006) 42 EHRR 15 and (2007) 45 EHRR 4]:

(a) The principle of lawfulness presupposes that the applicable provisions of domestic law are sufficiently accessible, precise, and foreseeable in their application…

[120] Ibid, pgs 1-4, paras 4-11
[121] Ibid, pg 1, para 4
[122] Ibid, pgs 1-4, paras 4-11

(b) The principle of a legitimate aim presupposes the existence of a general interest in the community which is inherent in the need for a fair balance...

(c) The principle of fair balance requires an investigation to ascertain whether any person bears a disproportionate and excessive burden, and whether in turn this has been fairly balanced with the legitimate aim. The Bill generally constitutes a fair balance between the interests of the members of public service pension schemes, and fairness to the taxpayer who underwrites them. Reform is justified by the need to address rising longevity and the rising costs of public service schemes, the risks and costs of which have so far fallen mostly upon the taxpayer. This macro-economic judgement has been recognised by the Courts as the preserve of Government policy which should not be interfered with short of manifest unfairness or impropriety, which the Bill does not constitute. The new pension schemes still constitute a pension of real value in excess of that which could be purchased on the private market with commensurate investment, demonstrating that scheme members are being treated fairly. Further, the proposed new pension schemes remove an existing bias in favour of workers with better career progression. Any subsequent increase in state pension age will reflect increased longevity, meaning that public service workers will spend a similar proportion of their adult lives in retirement. Those who are most affected by the change will be protected by a combination of tapering, increased longevity, flexibility in retirement age, and preserved benefits from service in the old schemes. Finally, the Government has committed to keep the link between state pension age and normal pension age under review.

It is important to note that:

The Government is entitled to a margin of appreciation in the fields of social and economic policy. The margin is broader when Parliament creates primary legislation than when a Minister of State uses a power to create secondary legislation. [R (Sinclair Collis) v Secretary of State for Health [2011] EWCA Civ 437]

… (c) Article 1 Protocol 1 applies equally to non-contributory state benefits where entitlement to them arises under law.

Appendix 2 – Article 14 – Prohibition against discrimination

Article 14 provides that *ECHR* rights shall be secured without discrimination on any ground such as sex, race, ethnic origin, age, national or social origin, or any other status. It is important to emphasize that this is an illustrative and not an exhaustive list. [*Engel v Netherlands* (1976) 1 EHRR 647] Article 14 does not provide a free-standing right; instead it applies only when another *ECHR* right is engaged. In the context of the Bill, Article 1, Protocol 1 is the other right. In addition, a breach of Article 14 does not presuppose that the linked Article is breached. [*Airey v Ireland* (1979) 2 EHRR 305] Discrimination occurs when a public authority, for no objective or reasonable reason:

- treats a person less favourably than others in similar situations on the basis of a particular characteristic;
- fails to treat people differently when they are in significantly different situations; or,
- applies apparently neutral policies in a way that has a disproportionate impact on individuals or groups.

Discriminatory law or treatment is lawful where there is a reasonable justification for the measures imposed. This requires both a legitimate aim; and that there is a reasonable relationship of proportionality between that aim and the measures applied.

Apparently the Government enjoys a wide margin of appreciation in assessing whether and to what extent differences in otherwise similar situations justify a different treatment in law. It seems that the scope of the margin of appreciation varies according to the circumstances, the subject-matter and its background. [*Rasmussen v Denmark* A 87 (1984) 7 EHRR 371]

The level of justification required also varies, depending upon which ground is affected, and is higher in the case of discrimination on grounds such as race, sex, nationality, religion or sexual orientation.