Committee for Finance and Personnel

Report on the Superannuation Bill

Together with the Minutes of Proceedings of the Committee relating to the Report, Written Submissions, Memoranda and the Minutes of Evidence.

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Committee Powers and Membership

Powers

The Committee for Finance and Personnel is a Statutory Departmental Committee established in accordance with paragraphs 8 and 9 of the Belfast Agreement, Section 29 of the Northern Ireland Act 1998 and under Assembly Standing Order 48. The Committee has a scrutiny, policy development and consultation role with respect to the Department of Finance and Personnel and has a role in the initiation of legislation.

The Committee has the power to;

- consider and advise on Departmental budgets and annual plans in the context of the overall budget allocation;
- approve relevant secondary legislation and take the Committee Stage of primary legislation;
- call for persons and papers;
- initiate inquiries and make reports; and
- consider and advise on matters brought to the Committee by the Minister of Finance and Personnel.

Membership

The Committee has eleven members, including a Chairperson and Deputy Chairperson, with a quorum of five members. The membership of the Committee during the current mandate has been as follows:

Mr Daithí McKay[1] (Chairperson)
Mr Dominic Bradley (Deputy Chairperson)
Mrs Judith Cochrane
Mr Leslie Cree MBE
Mr Paul Girvan
Mr David Hilditch
Mr William Humphrey
Mr Roy Beggs[2]
Ms Megan Fearon[3]
Mr Mitchel McLaughlin
Mr Adrian McQuillan

1 Mr Daithí McKay replaced Mr Conor Murphy MP with effect from 2 July 2012.

2 Mr Roy Beggs replaced Mr Ross Hussey with effect from 23 April 2012.

3 Ms Megan Fearon was appointed to the Committee with effect from 10 September 2012.
Mr Paul Maskey was a member of the Committee from 12 September 2011 to 2 July 2012.

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List of Abbreviations and Acronyms used in the Report

CBI	Confederation of British Industry
CIPD	Chartered Institute of Personnel and Development
CSCS	Civil Service Compensation Scheme
DFP	Department of Finance and Personnel
GB	Great Britain
GMB	General, Municipal, Boilermakers and Allied Trade Union
NDPBs	Non-Departmental Public Bodies
NIHRC	Northern Ireland Human Rights Commission
NIPSA	Northern Ireland Public Service Alliance
NI	Northern Ireland
NICS	Northern Ireland Civil Service
NICSCS	Northern Ireland Civil Service Compensation Scheme
OFMDFM	Office of the First Minister and deputy First Minister
PCS	Public and Commercial Services Union
PCSPS	Principal Civil Service Pension Scheme
RaISe	Assembly Research and Information Service
TUS	Trade Union Side
UNITE	Unite the Union
UK	United Kingdom

Executive Summary

The main policy objective of the Superannuation Bill is to amend the existing primary legislation, the Superannuation (Northern Ireland) Order 1972, to provide that the Department of Finance and Personnel will no longer have to obtain the consent of the civil service trade unions to future reductions in the amount of compensation due to civil servants upon compulsory or voluntary redundancy. In place of the trade union "veto" the Bill will introduce new requirements on DFP to consult with a view to reaching agreement with the trade unions and to lay a report on the consultation before the Assembly.

The Superannuation Bill, which was introduced to the Assembly by the Minister of Finance and Personnel on 12 March 2012, comprises 4 clauses. Following its Second Stage in the Assembly on 26 March 2012, the Bill was referred to the Committee for Finance and Personnel for Committee Stage. As part of its consideration of the Bill, the Committee issued a call for evidence and received written submissions and held oral hearings with key stakeholders, including the Department, the trade unions, the Northern Ireland Human Rights Commission and the Equality Commission.

As part of its scrutiny, the Committee sought responses from the Department to each of the concerns and proposals raised by the stakeholders and to queries which the Committee itself raised. The Department provided a series of written responses in addition to further oral briefings, which clarified and addressed a number of the issues to the satisfaction of the Committee. The evidence presented to the Committee and the responses provided by the Department are included in the appendices to this report.

During the course of deliberations, it became clear that, while removing the trade union "veto", the Bill, as drafted, would fail to address an anomaly whereby the Department can make changes to the civil service compensation scheme through subordinate legislation, in this instance to decrease redundancy payments for civil servants, without the Assembly being able to debate and agree the proposals when deemed necessary. Given this lack of accountability to the Assembly, the Committee agreed to table an amendment to the Bill at Consideration Stage to provide for a measure of Assembly control in this regard. The Committee welcomes recent notification that this proposed amendment will be accepted by the Minister of Finance and Personnel.

Reflecting the outcome of the Committee Stage deliberations, this report to the Assembly also includes a range of key conclusions and policy recommendations for the Department to take forward which will help to address issues raised in the evidence presented.

Key Conclusions and Recommendations

1. Members welcome the clarification, which was received from DFP during Committee Stage of the Bill, that engagement between NICS management and the trade unions offers opportunity for compromise and agreement on potential nuances to the timing and substance of compensation scheme changes in NI, while maintaining overall parity with policy in GB. The Committee believes that the reconstituted Pensions Forum has the potential to provide an appropriate mechanism for meaningful engagement and calls on both management side and trade union side to engage constructively through the Forum with the aim of reaching agreement on any scheme changes, which will be made through subordinate legislation following enactment of the Bill.

2. The Committee is mindful that stakeholder opinion is sharply divided over the provisions in Clause 1 of the Bill to remove the requirement on DFP to obtain the consent of the civil service trade unions for reductions in benefits provided under the Civil Service Compensation Scheme. The decision of the Committee to support this reform is influenced by a number of considerations, including: the fact that no such trade union "veto" exists in respect of the superannuation arrangements for the other categories of public servants; the clarification and assurances received on the consultation arrangements to be followed; and the safeguard provided in the proposed amendment to the Bill to establish a measure of Assembly control over future scheme changes.

3. Following deliberation, the Committee decided not to propose an amendment to strengthen the reporting duty in Clause 2 of the Bill, to include information on: the consideration given to all issues raised during the consultation; the detail of any changes made to the provisions of the scheme as a result of the consultation; and the time period for the consultation. Given that this decision was, in part, influenced by assurances from DFP that these requirements "are already inherently a requirement under Clause 2", the Committee will undertake careful scrutiny of the reports which DFP lays in the Assembly to ensure that they include the detail necessary to inform the Assembly's view on the robustness of the consultation undertaken by the Department.

4. Arising from its examination, both of the requirements for proper consultation and of the current process for following parity in policy with GB, the Committee recommends that, in future, the Department undertakes local consultation with the NICS trade unions at the formative stage of policy development and in tandem with, rather than subsequent to, the timetable followed by the respective Whitehall department. Members believe that this would help maximise the opportunity for DFP and the Executive to influence UK-wide policy in this area and to ensure that any considerations which are specific to NI are taken into account before reform proposals are finalised.

5. Given the case for providing for a measure of Assembly control over future changes to the Civil Service Compensation Scheme, the Committee will table an amendment at Consideration Stage to propose to the Assembly that a new Clause 3 is inserted in the Bill as follows:

   "Article 3 of the 1972 Order shall be amended as follows.

   After paragraph (2) there shall be inserted the following paragraph –

   (2A) Any scheme made under this Article, which has the effect of reducing the amount of a compensation benefit, as defined in Article 4, shall be subject to negative resolution."

6. In view of its decision to opt for the negative, rather than the affirmative, resolution in the proposed amendment, the Committee calls on DFP to provide an assurance that, in the event of the amendment being agreed by the Assembly, it will observe the practice of the "21 Day Rule", whereby any future compensation scheme changes will not commence until at least 21 days after being laid in the Assembly.

7. The Committee welcomes the Finance Minister's recent acceptance of the Committee amendment and members are agreed that, in advance of the Committee tabling the amendment for debate at Consideration Stage, the Department will be given an opportunity to agree the final wording of the amendment with the Committee, subject to there being no change to the effect of the amendment as already agreed by the Committee.

8. In summary, the Committee is content with clauses 1 to 4 and with the Long Title of the Bill as drafted. However, the Committee will table the aforementioned amendment to insert a new Clause 3 into the Bill. This report on the Bill, which includes supplementary policy recommendations for consideration by DFP, is issued to inform the contributions of Assembly Members to the Consideration Stage debate.

Introduction

Background to the Bill

9. The Minister of Finance and Personnel introduced the Superannuation Bill to the NI Assembly on 12 March 2012. The Assembly debated the principles of the Bill at Second Stage on 26 March 2012 when the Bill was referred to the Committee for Finance and Personnel. The Bill has four clauses, the provisions of which are explained in the Explanatory and Financial Memorandum.

10. The main policy objective of the Bill is to amend the existing primary legislation, the Superannuation (Northern Ireland) Order 1972 ("the 1972 Order") to provide that the Department of Finance and Personnel (DFP) will no longer have to obtain the consent of the civil service trade unions to future reductions in the amount of compensation due to civil servants upon compulsory or voluntary redundancy. In place of the trade union "veto" the Bill will introduce new requirements on DFP to consult with a view to reaching agreement with the trade unions and to lay a report on the consultation before the Assembly.

11. In outlining the background to the Bill and the Principal Civil Service Pension Scheme in Northern Ireland, departmental officials explained that the amount of compensation and early pension benefits paid to staff who face either voluntary or compulsory redundancy is determined by length of service and age of the individual and that, under the current provision, compensation payments are generally limited to a maximum of three years' pay.[1] The provisions in the Bill mirror changes made in GB under the Superannuation Act 2010 which paved the way for the Cabinet Office to introduce a new compensation scheme for the Home Civil Service in December 2010.[2] The Committee was advised that, under this new scheme for the Home Civil Service, the maximum payable is limited to 21 months' pay for voluntary redundancy and 12 months' pay for compulsory redundancy. DFP pointed out that:

> *"These terms are considerably less generous than those currently available for Northern Ireland Civil Servants. Failure to maintain parity in this instance would result in civil servants in Northern Ireland who are made redundant continuing to receive higher compensation payments than Great Britain civil servants which leave in similar circumstances which may also exert additional pressures on public expenditure in Northern Ireland."* [3]

12. Members noted that, as a result of this legislative change in GB, the NI Executive agreed to the Bill being brought forward to amend the corresponding primary legislation in NI (the 1972 Order), enabling parity in civil service superannuation arrangements to be maintained with GB. The Bill would therefore facilitate planned amendments to the NI Civil Service Compensation Scheme, which would be made by secondary legislation and would follow the amendments to the Home Civil Service scheme in 2010. As such, the Bill represents the first of a two stage reform process, with the main changes at this stage being outlined in Table 1.

Table 1: Key changes proposed in primary legislation and comparison between provisions for civil servants and other public servants.

	Superannuation (NI) Order 1972		Superannuation Bill 2012
	Civil Servants	**Other Public Servants**	**Civil Servants**
Consultation Requirements	Yes	Yes	Strengthened
Trade Union Veto	Yes	No	Removed
Assembly Control	No	Yes	No

1 Appendix 2, Official Report, Committee for Finance and Personnel, 15 June 2011

2 Appendix 2, Official Report, Committee for Finance and Personnel, 15 June 2011

3 Appendix 3, DFP Briefing Paper, 27 June 2011

13. During the initial briefing on the Bill, members also noted that the legislative change in GB was not without challenge. In response to proposed reform of the compensation scheme in Westminster, the Public & Commercial Services Union (PCS) applied for a judicial review of the decision to amend the compensation scheme without trade union agreement. The Courts upheld the union's case and rejected the argument made by the UK Cabinet Office that the requirement for agreement only applied to the pension scheme and not the compensation scheme.[4] As a result of this judgement the UK government introduced the Superannuation Act 2010 to remove the union veto, as outlined above.

14. A further legal challenge was made by PCS, which contended that the new compensation scheme in GB breached Article 1 of Protocol 1 to the European Convention on Human Rights (i.e. the right to enjoyment of possessions). PCS argued that the rights to redundancy pay in the compensation scheme amount to possessions, and therefore the UK Government was in breach by interfering with those rights.[5] This claim was rejected by the court, dismissing the Union's claim that the Superannuation Act 2010 interferes with accrued pension rights.

The Committee's Approach

15. The Committee received a pre-introductory briefing on the Bill from DFP officials on 15 June 2011. In addition, the Committee received a subsequent briefing on 7 March 2012. This briefing updated members on the progress with the Superannuation Bill and also provided further information on the legal challenge that was brought by PCS and the Prison Officers' Association in GB against the changes brought about by the Superannuation Act 2010. Following introduction of the Bill to the Assembly on 12 March, at its meeting on 21 March 2012, the Committee identified a number of themes for further consideration and members agreed to invite briefings from key stakeholders.

16. After the Bill passed Second Stage on 26 March and was referred for Committee Stage, members took evidence from both DFP officials and representatives of the trade unions on 27 March 2012. A public call for written evidence on the provisions within the Bill was issued and the Committee also wrote directly to a number of stakeholders. In response to its call for evidence the Committee received written submissions from the following organisations: the Northern Ireland Human Rights Commission (NIHRC), the Equality Commission and the Chartered Institute of Personnel and Development (CIPD). Trade unions also submitted papers associated with their evidence sessions with the Committee. NIHRC and the Equality Commission subsequently provided oral evidence on 9 May 2012.

17. Arising from the initial briefings by the Department and the unions, the Committee noted the potential for positive engagement between both sides through the reconstituted "Pensions Forum." The Terms of Reference for the Forum stated that it had been established "for the purpose of sharing information and formal consultation … with the aim of reaching agreement on any changes" and that "Management will provide timely, relevant and meaningful information … to facilitate constructive and timely consultation."[6] The Committee had been advised by the Minister on 24 April that further meetings of the Pensions Forum were scheduled for May and June, and that an additional meeting was proposed which would be dedicated to consultation on the clauses of the Bill.[7] It was considered that the outcome of this engagement could inform the Committee's deliberations on the Bill. This, coupled with the important equality and human rights issues raised in evidence, led the Committee to seek and gain Assembly approval to extend the Committee Stage until 28 September 2012. It was anticipated that this extension would allow for these matters to be discussed fully with DFP and for the Committee to reach a considered position on the Bill.

4 Appendix 6, RalSe paper NIAR 105-12: The Superannuation Bill, 23 March 2012

5 Appendix 6, RalSe paper NIAR 105-12: The Superannuation Bill, 23 March 2012

6 Appendix 3, DFP Correspondence, 25 July 2012

7 Appendix 3, DFP Correspondence, 24 April 2012

18. On 4 July 2012, members held further oral hearings from trade union representatives and DFP officials. The Committee made a detailed analysis of the issues arising from evidence and sought responses from DFP to each of the concerns raised by witnesses and to additional queries, which the Committee itself raised. The Department provided a series of follow up responses in addition to oral briefings on 15 June 2011, 7 March 2012, 4 July 2012 and 5 September 2012. Members discussed four potential areas for amendments and agreed that Committee staff would co-ordinate the drafting of possible amendments for further discussion after summer recess.

19. On 5 September 2012, the Committee considered four potential amendments prepared by the Bill Office and also received advice from Assembly Legal Services on the legal implications of replacing the duty to consult with a view to reaching agreement with a duty to negotiate. Further oral evidence was also received from DFP officials. The Committee carried out a clause-by-clause scrutiny of the Bill on 12 September 2012. At its meeting on 26 September, the Committee agreed that its report on the Bill be printed.

20. The Minutes of Proceedings relating the Committee's deliberations are included at **Appendix 1**. Copies of the Officials Reports of the oral evidence are included at **Appendix 2**. Follow up memoranda and papers, including the written responses from DFP to the queries raised by witnesses and the Committee are at **Appendix 3**. The written submissions which the Committee received are at **Appendix 4**. Other papers are at **Appendix 5**. Finally, **Appendix 6** includes research papers provided by Assembly Research (RaISe) to assist the Committee's deliberations.

Provisions in the Bill

21. The Bill as drafted contains four clauses, the provisions of which are described in the Explanatory and Financial Memorandum as follows:

Clause 1: Consents required for civil service compensation scheme modifications.

This clause removes the requirement in Article 4 of the 1972 Order to obtain the consent of civil service trade unions for reductions in benefits provided under the Civil Service Compensation Scheme. The removal of this requirement does not apply to benefits provided in respect of an exit which is the consequence of a notice of dismissal given, or an agreement made, before the scheme making the reductions comes into effect (see subsections (1) to (3)).

Subsection (4) provides that the removal of the requirement for trade union consent applies to reductions given effect by a scheme made after the coming into force of clause 1.

Subsection (5) and (6) provide that where a scheme under Article 3 of the 1972 Order is made after the time when this clause comes into force and consultation on the proposed scheme took place before that time, the fact that the amendments made by this clause were not in force when the consultation took place does not affect whether the consultation met the requirements of Article 3(2) of the 1972 Order. In other words, that consultation is not to be regarded as ineffective just because the amendments were not yet the law when it took place.

Clause 2: Consultation in relation to civil service compensation scheme modifications.

This clause strengthens the requirement on DFP to carry out consultation with the civil service trade unions, through amendment of Article 4 of the 1972 Order.

Subsection (2) has the effect of making the existing duty on DFP *to consult* a duty *to consult with a view to reaching agreement* on any provision of a scheme made under Article 3 of the 1972 Order that would reduce the amount of a compensation benefit.

Subsection (3) introduces a requirement on DFP to lay before the Assembly a report on the consultation relating to such a provision before the scheme comes into operation, and specifies what that report must include.

Subsection (4) provides that the changes made by clause 2 in relation to consultation apply to reductions given effect by a scheme made after the coming into force of clause 2.

Clause 3: Interpretation and Clause 4: Short title and commencement.

Clause 3: Interpretation states that in the Bill "the 1972 Order" means the Superannuation (NI) Order 1972, while Clause 4: Short title and commencement sets out the title of the Bill and when the provisions of the Bill come into force.[8]

8 Appendix 3, The Superannuation Bill Explanatory & Financial Memorandum, DFP

Key Issues from the Evidence

22. A number of key issues arose from the written and oral evidence received by the Committee and during members' deliberations, as outlined below.

Parity with GB

23. A key theme from the evidence to the Committee included consideration of the principle of maintaining parity in policy on public service superannuation arrangements between NI and GB, which is the premise upon which the Bill is drafted. DFP has explained to the Committee that:

> *"Although public service pension policy is a transferred matter it has been a matter of practice for many decades that the pension scheme for civil servants in Northern Ireland has been virtually identical to its equivalent in GB."*[9]

24. The main argument against departing from parity in this area was highlighted by DFP in terms of potential costs to the Executive, whether that is the administrative costs in departing from parity in terms of systems and processes, or the implications for the NI block grant.[10] The Whitehall position was noted, including a National Audit Office report, entitled *Managing Early Departures in Central Government*, which showed 45% lower costs for financing of "early departures" from the Home Civil Service under the new compensation scheme as opposed to under the previous scheme.[11] As a simplified example of the differences to the NI public purse between the current scheme and the proposed scheme, DFP stated in a written response to the Committee that for "100 people leaving who would have left under a voluntary early severance (which typically had compulsory terms applying) the costs would be at least £12m compared to £7m under the new scheme and this would increase further as additional compensation payment from normal retirement age would also be payable."[12]

25. Other evidence supporting the cost argument was received from CIPD which pointed out that the proposed new NICS Compensation Scheme arrangements will still be more generous than many private sector employees would expect to enjoy.[13] In reference to the CIPD evidence, the Department also made the point that all compensation payments and enhanced pensions entitlements incur a charge against employers' Departmental Expenditure Limit budgets.

9 Appendix 3, DFP Correspondence, 27 June 2011

10 Appendix 3, DFP Correspondence, 27 June 2011

11 Appendix 5, National Audit Office Cabinet Office, "Managing Early Departures in Central Government", 15 March 2012

12 Appendix 3, DFP Correspondence, 21 March 2012

13 Appendix 4, CIPD submission to the Committee for Finance and Personnel, May 2012

26. The Committee requested DFP's view on the pros and cons of breaking parity in this area and this is provided in Table 2.

Table 2: DFP Analysis of Pros & Cons of Breaking Parity with GB.[14]

Pros	Cons
Local autonomy in decision making in the administration of the scheme.	Variance across the civil service and perhaps across the public service which may attract criticism from HM Treasury.
The ability to have more/less favourable benefits for civil servants in NI as compared with GB counterparts.	The consequence to the public purse of providing more favourable terms to NI civil servants (e.g. for 100 staff the difference is in the region of £5m).
Possible increase in: Civil Service Pensions staffing, legislative expertise with input from legislative draftsmen (only valid if increase in Civil Service posts for administration and legal work was deemed an advantage).	Loss of draft scheme amendments and subsequent draft employer and employee communications, guidance, systems and procedures together with expertise and precedence from GB colleagues. Technical expertise would also be lost, for example, calculators and other online resources which are currently shared with GB Cabinet Office.
No delay in awaiting draft scheme amendments from GB Cabinet Office.	Loss of expertise from GB, NI would no longer have precedents to follow from the wider Home Civil Service and would be required to draft all legislative changes and potentially would require our own Pension Ombudsman.
Local Consultation with Trades Unions.	Loss of the benefits of a central negotiating forum with Trades Unions and therefore consistency of approach across the public sector.

27. For their part, the trade unions acknowledged that they have in the past been generally supportive of parity. However, the union representatives maintained that, in order to protect their members' interests, there is a need to "maintain a degree of flexibility in any approach that we might take to any manifestation of or departure from parity, because circumstances will vary."[15] The unions would generally argue for no detriment when faced with proposals which would result in their members' terms and conditions being worsened; however, the representatives explained that they did not reach a point at which there was a sufficiently good offer on the table.

28. In response to the DFP argument regarding the potential cost to the Executive of not maintaining parity in superannuation arrangements, the trade unions pointed out that, unlike the UK Government, the Executive has no plans to make redundancies in the NICS and, as such, there is no prospect of significant costs being incurred in the foreseeable future. They stated that "there is no great cost driver in NI…our understanding from the Department is that there is not any intention to have large-scale redundancies in the Civil Service in NI."[16] Related to this point, research provided to the Committee highlighted how the role of DFP in centrally managing human resources across NICS – which contrasts to the position in Whitehall where departments operate more independently of each other – means that there is greater scope for civil servants to be redeployed and therefore maybe less risk of redundancy in NI.[17]

14 Appendix 3, DFP Correspondence, 21 March 2012

15 Appendix 2, Official Report, The Superannuation Bill, 27 March 2012

16 Appendix 2, Official Report, The Superannuation Bill, 27 March 2012

17 Appendix 6, RalSe paper, NIAR 105-12: The Superannuation Bill, 23 March 2012

29. In contrast to the position in NICS, the trade unions pointed out that their "union members who work in non-departmental public bodies (NDPBs) that follow Civil Service terms and conditions of employment are in a more difficult position with their budgets. Those bodies do not have the scope to redeploy people because their organisations are not large like the NICS."[18] It is the union's belief that some NDPBs might, therefore, introduce voluntary or compulsory redundancy schemes. In those circumstances, particularly in NI, where jobs are more difficult to find, the unions could not justify diluted benefits under a compensation scheme for people who face the prospect of being made redundant from NDPBs.

30. As part of its deliberations on the cost implications for the NI block grant of departing from parity in this area, members also noted research which pointed out that, under the arrangements for "Barnett consequentials," NI would receive a population-based share of any addition to a Whitehall department's budget to fund a redundancy scheme in England. In such circumstances, in terms of meeting the costs of compensation payments, a public expenditure pressure arises from not maintaining parity only if a Whitehall department and the NI Executive both decide to initiate a programme of redundancy.[19]

31. Further research, considered by the Committee at its meeting on 5 September 2012, found that there have been some minor divergences from parity in relation to pension provision in NI.[20] For example, the Department of Education point out that the only significant difference in the NI Teachers' Pension Scheme is in relation to the re-employment of retired teachers, who cannot contribute to the pension scheme, whereas in Scotland, England and Wales they can. It was also noted that the Department of the Environment had pointed out differences between the Local Government Pension Scheme in NI and the Local Government Pension Scheme in England, Scotland and Wales.[21]

32. Further to this theme, during the evidence session on 5 September 2012, the Committee was advised by DFP officials that, while maintaining overall parity with GB in terms of compensation scheme arrangements, there may be scope for compromise in terms of nuances with the timing and the substance of scheme changes that could be ironed out during consultation with the unions.[22] **Members welcome the clarification, which was received from DFP during Committee Stage of the Bill, that engagement between NICS management and the trade unions offers opportunity for compromise and agreement on potential nuances to the timing and substance of compensation scheme changes in NI, while maintaining overall parity with policy in GB. The Committee believes that the reconstituted Pensions Forum has the potential to provide an appropriate mechanism for meaningful engagement and calls on both management side and trade union side to engage constructively through the Forum with the aim of reaching agreement on any scheme changes, which will be made through subordinate legislation following enactment of the Bill.**

Removal of the Trade Union "Veto"

33. In their evidence, the trade union representatives argued that the removal of the trade union veto is the main "raison d'être" of the Superannuation Bill.[23] DFP, on the other hand, argued that removing the veto is necessary to maintain parity and that replacing it with a new requirement to consult with the aim of reaching agreement is "necessary and appropriate" and "will advance best practice and effective consultation." The Department also argued that

18 Appendix 2, Official Report The Superannuation Bill, 27 March 2012

19 Appendix 6, RalSe paper NIAR 105-12: The Superannuation Bill, 23 March 2012

20 Appendix 6, RalSe paper NIAR 569-12: further evidence, 31 August 2012

21 Appendix 6, RalSe paper NIAR 569-12: further evidence, 31 August 2012

22 Appendix 6, Official Report, 5 September – DFP Evidence Session

23 Appendix 2, Official Report, 5 July 2012 – Superannuation Bill Trade Unions Evidence Session

the retention of the veto would be contrary to the meaning of consultation as defined in the Information and Consultation of Employees Regulations (NI) 2005. [24]

34. In its evidence, NIHRC suggested that the removal of the trade union veto risks regression in the protection of a number of human rights, including the right to form and join trade unions for the promotion and protection of economic and social interests and the right to collective bargaining.[25] It was stated that "the Commission's concern is that the change from a duty to seek trade union consent to a duty only to consult with trade unions may risk being a retrospective step in human rights protection for trade union members."[26] The Department disputed this argument, referring to its own legal advice that the Bill makes no attempt to interfere with the right to form a union, and arguing that, rather than impeding union activity and collective bargaining, the Bill actually imposes a new duty on the Department to engage with the union with a view to reaching agreement.[27]

35. **The Committee is mindful that stakeholder opinion is sharply divided over the provisions in Clause 1 of the Bill to remove the requirement on DFP to obtain the consent of the civil service unions for reductions in benefits provided under the Civil Service Compensation Scheme. The decision of the Committee to support this reform is influenced by a number of considerations, including: the fact that no such trade union "veto" exists in respect of the superannuation arrangements for the other categories of public servants; the clarification and assurances received on the consultation arrangements to be followed; and the safeguard provided in the proposed amendment to the Bill to establish a measure of Assembly control over future scheme changes.**

Consultation and Negotiation

36. During the Committee Stage concern was raised as to whether the consultation provisions in Clause 2 of the Bill, in particular the "duty to consult with a view to reaching agreement" would lead to meaningful and constructive engagement between Management Side and the trade unions. The unions raised doubts in this regard, arguing that the Department's stance in following a strict approach to parity with GB means that there is no scope for making changes as a result of this consultation. As already noted, the Human Rights Commission also highlighted concerns regarding a "regression in human rights", such as the right to collective bargaining.

37. In its response to these concerns DFP pointed out that, in addition to the enhanced statutory duty to "consult with a view to reaching agreement", Clause 2 also places a new duty on the Department to report to the Assembly on the consultation process and outcome. As alluded to above, Departmental officials indicated that, while maintaining overall parity with GB in terms of compensation scheme arrangements, there may be nuances with the timing and the substance of scheme changes that could be ironed out during the consultation process. In addition, DFP did not share the Human Rights Commission's concerns.

38. As part of their deliberations on this matter, members examined the difference between consultation and negotiation and the requirements for proper consultation. To inform this work, the Committee commissioned detailed research and received legal advice specifically on the implications of a potential amendment to replace the "duty to consult with a view to reaching agreement" with a "duty to negotiate". The Committee noted that in case law and in authoritative legal commentary the duty to consult with a view to reaching agreement has been regarded as equating to a duty to negotiate, with agreement being the aim – though not a requirement – in both cases. While a duty to negotiate is likely to involve more dialogue,

24 Appendix 2, Official Report, 5 July 2012 – Superannuation Bill DFP Evidence Session

25 Appendix 2, Official Report, 9 May 2012 – Superannuation Bill NIHRC Evidence Session

26 Appendix 2, Official Report, 9 May 2012 – Superannuation Bill NIHRC Evidence Session

27 Appendix 2, Official Report, 5 July 2012 – Superannuation Bill DFP Evidence Session

an amendment to the Bill along this line would require provision for the practical operation of such a duty, bearing in mind the dearth of case law and comparable statutory provision in this area. In view of these considerations, at the Committee meeting on 12 September 2012, members decided not to pursue an amendment in this regard.

39. From the research and legal advice received, the Committee was also made aware of the "Sedley" or "Gunning" principles which set out the requirements for fair consultation and which have been explicitly adopted by the Court of Appeal in NI. The four requirements of consultation were stated as follows:

> *"To be proper, consultation must be undertaken at a time when proposals are still at a formative stage; it must include sufficient reasons for particular proposals to allow those consulted to give intelligent consideration and an intelligent response; adequate time must be given for this purpose; and the product of consultation must be conscientiously taken into account when the ultimate decision is taken."* [28]

40. The research also highlighted that both the UK Government and the Office of the First Minister and deputy First Minister (OFMDFM) issue guidance which aligns with these principles and which advises that 8 weeks is the minimum period and 12 weeks is the standard period for formal consultations.

41. With reference to the "Gunning Principles," the Committee noted that the Bill does not specify when the consultation should take place on proposed scheme changes, though members were aware that the Terms of Reference for the Pensions Forum refer to the consultation being timely and undertaken "at the earliest opportunity." It was also noted that the Bill does not make provision for a consultation timeframe. As a result of its consideration of these issues the Committee examined other potential amendments to the Bill including: to establish a minimum time period for consultation; and provisions to strengthen the new duty on the Department to report to the Assembly on the consultation process and outcome. On the first possibility, members decided not to pursue an amendment along these lines, as to specify a given period for consultation could create inflexibility, especially in circumstances in which the consultation proposals are non-contentious.

42. **Following deliberation, the Committee decided not to propose an amendment to strengthen the reporting duty in Clause 2 of the Bill, to include information on: the consideration given to all issues raised during the consultation; the detail of any changes made to the provisions of the scheme as a result of the consultation; and the time period for the consultation. Given that this decision was, in part, influenced by assurances from DFP that these requirements "are already inherently a requirement under Clause 2", the Committee will undertake careful scrutiny of the reports which DFP lays in the Assembly to ensure that they include the detail necessary to inform the Assembly's view on the robustness of the consultation undertaken by the Department.[29]**

43. **Arising from its examination, both of the requirements for proper consultation and of the current process for following parity in policy with GB, the Committee recommends that, in future, the Department undertakes local consultation with the NICS trade unions at the formative stage of policy development and in tandem with, rather than subsequent to, the timetable followed by the respective Whitehall department. Members believe that this would help maximise the opportunity for DFP and the Executive to influence UK-wide policy in this area and to ensure that any considerations which are specific to NI are taken into account before reform proposals are finalised.**

28 Appendix 6, RalSe paper NIAR 246-12: Duty to Consult, 27 April 2012

29 Appendix 3, DFP Correspondence, 10 September 2012

Assembly Control

44. In the course of deliberations, members also explored the issue of Assembly control in relation to making scheme amendments. Under Article 4(8) of the 1972 Order, superannuation schemes for civil servants come into operation once DFP simply lays a copy of the scheme in the Assembly. This contrasts to the usual procedure for subordinate legislation being subject to Assembly approval on the basis of either the negative or affirmative resolution procedure. Importantly, members noted that under Article 14(5) of the 1972 Order, the negative resolution procedure applies in relation to regulations providing for the superannuation arrangements for local government employees, teachers and health service employees. In further exploring this anomaly, the Committee obtained confirmation from DFP that provision could be added to the Bill to amend the 1972 Order to require scheme amendments to be subject to Assembly procedure.[30] However, the Departmental officials initially stated that they would not be supportive of such an amendment, arguing instead that the new reporting duty will be distinctive and will provide a sufficient level of accountability to the Assembly.[31]

45. Nonetheless, the Committee considered that a strong case exists for amending the Bill to provide for a measure of Assembly control. Whilst the Bill will require the Department to report to the Assembly on the consultation outcome, the Assembly would have no control over proposed scheme amendments in terms of being able to vote against them (for example, if following representations from employee representatives, both the Committee and Assembly were concerned with the consultation process). In addition, research pointed out that the context and historical reasons for removing parliamentary control in Westminster in 1972 may no longer apply, including the context of having a devolved Assembly.[32]

46. In considering the options regarding Assembly control, members examined the respective merits of the affirmative and negative resolution procedures. It was noted that a case could be made for affirmative resolution based on the numbers of people affected by changes to the compensation scheme and the relevance to public spending. Also the affirmative approach would address the theoretical risk that scheme changes could be bought into operation by the Department before the Committee had an opportunity to table a plenary motion for annulment "praying against" the scheme changes. While cognisant of these points, the Committee considered that the negative resolution procedure would align more with the provision in the 1972 Order for changes to the compensation schemes of other public servants.

47. **Given the case for providing for a measure of Assembly control over future changes to the Civil Service Compensation Scheme, the Committee will table an amendment at Consideration Stage to propose to the Assembly that a new Clause 3 is inserted in the Bill as follows:**

> ***"Article 3 of the 1972 Order shall be amended as follows.***
>
> ***After paragraph (2) there shall be inserted the following paragraph –***
>
> ***(2A) Any scheme made under this Article, which has the effect of reducing the amount of a compensation benefit, as defined in Article 4, shall be subject to negative resolution."***

48. **In view of its decision to opt for the negative, rather than the affirmative, resolution in the proposed amendment, the Committee calls on DFP to provide an assurance that, in the event of the amendment being agreed by the Assembly, it will observe the practice of the "21 Day Rule", whereby any future compensation scheme changes will not commence until at least 21 days after being laid in the Assembly.**

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30 Appendix 3, DFP Correspondence, 21 March 2012

31 Appendices 2 & 3, Official Report Superannuation Bill, 4 July 2012 – Superannuation Bill & DFP correspondence, 10 September 2012

32 Appendix 6, RalSe paper NIAR 569-12: Superannuation Bill Further Evidence, 31 August 2012

49. At its meeting on 19 September 2012, the Committee received informal notification that DFP had now decided to accept the Committee's proposed amendment to the Bill. **The Committee welcomes the Finance Minister's recent acceptance of the Committee amendment and members are agreed that, in advance of the Committee tabling the amendment for debate at Consideration Stage, the Department will be given an opportunity to agree the final wording of the amendment with the Committee, subject to there being no change to the effect of the amendment as already agreed by the Committee.**

Human Rights and Equality Considerations

50. In the course of its deliberations, the Committee examined the possible human rights and equality considerations associated with the Bill. Evidence was received from NIHRC and the Equality Commission and members also noted related issues which emerged during the consideration of the GB legislation and legal challenge on human rights issues.[33]

51. The Committee was advised that DFP had screened the Bill for equality impacts and concluded that there were no impacts on any of the section 75 categories. The Department also concluded that because the policy relates to payments to staff, there are no opportunities to promote equality of opportunity for people within the section 75 groups.

52. During an evidence session on 9 May 2012 the Equality Commission suggested that consideration should be given to equality issues arising from the changes to the NICS Compensation Scheme, which would be facilitated by provisions in the Bill. Such changes may lead to differentials based on age and length of service. The Equality Commission also stressed that it is important that the equality impact of the proposed scheme amendments "is considered at the start of the policy development process, rather than when the policy has been established."[34]

53. Following this evidence session the Committee raised a number of issues with the Department and, in its response, DFP explained that it did not consider that a consultation and full equality impact assessment on the reform proposals was necessary as "the central purpose of proposed reforms to the compensation scheme is to maintain the long standing principle of parity with the Home Civil Service." The Department also stated that "the proposed changes to the Civil Service Compensation Scheme (NI) replicate those changes for the Civil Service Compensation Scheme in the Home Civil Service and the Department is of the opinion that the proposed changes comply with the Employment Equality (Age) Regulations (NI) 2006."[35]

54. In its evidence to the Committee, NIHRC stated its belief that less protection will be afforded under a range of treaty obligations which will result in a retrospective step in human rights protection for trade union members and civil servants.

55. NIHRC also suggested that a different socio-economic situation applies in NI to that in GB, which needs to be considered given that the case taken by the PCS Union could have a different outcome in the NI context. Whitehall had planned redundancies of which a legitimate aim was the reduction of the national deficit; however the same cannot be said of NI.

56. Responding to the NIHRC evidence, the Department outlined its legal advice from the Departmental Solicitors Office (DSO) that human rights are not interfered with by the legislation and "it is the view of the DSO that the removal of the union veto to changes to the compensation scheme does not pose a significant risk of a successful challenge to the Bill on human rights grounds," highlighting the unsuccessful legal challenge in the English High Court. The Department further argued that:

33 Appendix 5, Superannuation Bill: Committee Stage Report Research Paper 10/60, 8 October 2010

34 Appendix 2, Official Report, Superannuation Bill Evidence session - The Equality Commission, 9 May 2012

35 Appendix 3, DFP Correspondence, 21 June 2012

"breaking parity in this issue would have serious financial consequences in terms of funding from the Northern Ireland block grant…the Department is of the view that the socio-economic situation facing the people of Northern Ireland, and the necessity to create savings to the public purse, is the same as that which applies in GB and in the event of a claim being made under protocol 1 of the European Convention on Human Rights that changes to compensation arrangements constitute and interference to a right to possessions, any interference can be justified in light of the effect for the community as a whole."[36]

57. Having engaged with DFP on the various equality and human rights considerations arising from the evidence, the Committee was content with the Department's assurances in relation to the issues identified.

36 Appendix 3, DFP Correspondence, 21 June 2012

Clause-by-Clause Consideration

58. The Committee reviewed the clauses of the Superannuation Bill on 4 July and 5 September 2012, and undertook its formal clause-by-clause scrutiny of the Bill on 12 September 2012.

59. The Committee carried out formal clause-by-clause consideration of the Superannuation Bill as follows:

Clause 1 – Consents required for civil service compensation scheme modification

Agreed: that the Committee is content with Clause 1 as drafted.

Clause 2 – Consultation in relation to civil service compensation scheme modifications.

Members considered two potential amendments to Clause 2.

Agreed: that neither of the two potential amendments will be proposed and that the Committee is therefore content with Clause 2 as drafted.

Members deliberated on a potential amendment to insert a new Clause 3 providing Assembly control over future Civil Service Compensation Scheme amendments. As a consensus could not be reached on this potential amendment, the Chairperson, Mr McKay, proposed that the Committee is content to propose to the Assembly that a new Clause 3 is inserted in the Bill as follows:

"Article 3 of the 1972 Order shall be amended as follows.

After paragraph (2) there shall be inserted the following paragraph –

(2A) Any scheme made under this Article, which has the effect of reducing the amount of a compensation benefit, as defined in Article 4, shall be subject to negative resolution."

Question put.

The Committee divided: Ayes 7; Noes 3; Abstentions 0.

AYES

Mr Beggs, Mr Bradley, Mr Cree, Ms Cochrane, Miss Fearon, Mr McKay, Mr McLaughlin.

NOES

Mr Girvan, Mr Hilditch, Mr Humphrey

ABSTENTIONS

None

Question accordingly agreed to.

Clause 3 – Interpretation

Agreed: that the Committee is content with Clause 3 as drafted.

Clause 4 – Short title & Commencement

Agreed: that the Committee is content with Clause 4 as drafted.

Long title of the Bill

Agreed: that the Committee is content with the Long Title of the Bill as drafted.

60. **In summary, the Committee is content with clauses 1 to 4 and with the Long Title of the Bill as drafted. However, the Committee will table the aforementioned amendment to insert a new Clause 3 into the Bill. This report on the Bill, which includes supplementary policy recommendations for consideration by DFP, is issued to inform the contributions of Assembly Members to the Consideration Stage debate.**

Appendix 1

Minutes of Proceedings

Wednesday, 15 June 2011
Room 30, Parliament Buildings

Present: Mr Conor Murphy MP MLA (Chairperson)
Mr Dominic Bradley MLA (Deputy Chairperson)
Mrs Judith Cochrane MLA
Mr Leslie Cree MBE MLA
Mr Paul Girvan MLA
Mr William Humphrey MLA
Mr Ross Hussey MLA
Mr Mitchel McLaughlin MLA
Ms Caitríona Ruane MLA

In Attendance: Mr Shane McAteer (Assembly Clerk)
Mrs Kathy O'Hanlon (Assistant Assembly Clerk)
Mr Jim Nulty (Clerical Supervisor)
Mr Dominic O'Farrell (Clerical Officer)

Apologies: Mr Adrian McQuillan MLA

10.05am The meeting opened in public session.

6. Proposed Superannuation Bill – DFP Evidence Session

The Committee took evidence from the following DFP officials: Grace Nesbitt, Head of HR Policy, Pay and Pensions Policy, Corporate HR, DFP and Kieran Hargan, Civil Services Pensions Branch, Corporate HR, DFP. The session was recorded by Hansard.

Agreed: that the DFP officials will provide additional information in writing as requested.

Agreed: to copy the DFP briefing paper to the NI Public Service Alliance (NIPSA) for comment.

[EXTRACT]

Wednesday, 7 March 2012
Room 30, Parliament Buildings

Present: Mr Dominic Bradley MLA (Deputy Chairperson)
Mr Leslie Cree MBE MLA
Mr Paul Girvan MLA
Mr William Humphrey MLA
Mr Paul Maskey MP MLA
Mr Mitchel McLaughlin MLA
Mr Adrian McQuillan MLA

In Attendance: Mr Shane McAteer (Assembly Clerk)
Mrs Kathy O'Hanlon (Assistant Assembly Clerk)
Mrs Sinead Kelly (Assistant Assembly Clerk)
Mr Jim Nulty (Clerical Supervisor)
Mr Dominic O'Farrell (Clerical Officer)
Mr Colin Pidgeon (Assembly Research & Information Service)

Apologies: Mr Conor Murphy MP MLA (Chairperson)
Mr David Hilditch MLA
Mr Ross Hussey MLA

10.08am The meeting opened in public session.

4. Superannuation Bill: Pre-introductory briefing – DFP Evidence Session

The Committee took evidence from the following DFP officials: Grace Nesbitt, Head of Civil Service Pensions; Margaret Miskelly, Head of Policy, Civil Service Pensions and Margaret Coyle, Civil Service Pensions. The evidence session was recorded by Hansard.

10.23am Mr McQuillan joined the meeting.

Agreed: that the DFP officials will provide additional information as requested during the session.

[EXTRACT]

Tuesday, 27 March 2012
Senate Chamber, Parliament Buildings

Present: Mr Conor Murphy MP MLA (Chairperson)
Mr Dominic Bradley MLA (Deputy Chairperson)
Mr Leslie Cree MBE MLA
Mr Paul Girvan MLA
Mr David Hilditch MLA
Mr William Humphrey MLA
Mr Ross Hussey MLA
Mr Paul Maskey MP MLA
Mr Mitchel McLaughlin MLA
Mr Adrian McQuillan MLA

In Attendance: Mr Shane McAteer (Assembly Clerk)
Mrs Sinead Kelly (Assistant Assembly Clerk)
Mr Jim Nulty (Clerical Supervisor)
Mr Dominic O'Farrell (Clerical Officer)
Ms Aine Gallagher (Bursary Student)
Mr Colin Pidgeon (Assembly Research & Information Service)

Apologies: Mrs Judith Cochrane MLA

10.03am The meeting opened in public session.

3. Matters Arising

DFP: Superannuation Bill Follow-up

The Committee noted the follow-up correspondence from DFP following the pre-introductory stage briefing on 7th March 2012.

Members considered a draft public notice calling for written submissions in relation to the Superannuation Bill.

Agreed: to publish the public notice in the media on Friday 30 March; and to allow six weeks for written submissions which will close at 4pm on Friday 11 May.

4. Superannuation Bill – Assembly Research Briefing

Members received a briefing from Assembly Research in relation to the Superannuation Bill.

Agreed: that the Committee will commission research into what constitutes good practice in terms of consultation including whether there are similar statutory requirements in other pieces of legislation. This will inform the Committee report on the Bill.

Agreed: that the economic impact and cost to the Executive of implementing the Bill will be considered as part of the Committee Stage scrutiny and that members will consider potential witnesses in relation to this issue in due course.

10.12am David Hilditch left the meeting

10.19am David Hilditch returned to the meeting

10.24am Paul Girvan joined the meeting

10.26am William Humphrey left the meeting

10.27am William Humphrey returned to the meeting

10.29am Paul Girvan left the meeting

10.31am Paul Girvan returned to the meeting

10.48am Dominic Bradley left the meeting

5. Superannuation Bill – Trade Union Evidence Session

The Committee took evidence from the following witnesses: Brian Campfield, General Secretary, NIPSA; Billy Lynn, Member of the General Council, NIPSA; Jim Caldwell, NI Secretary, FDA; Gareth Scott, Regional Organiser, Unite the Union and Alan Perry, Organiser, GMB.

Ross Hussey declared an interest as a member of the Unite Union.

10.50am Dominic Bradley retuned to the meeting

10.51am Adrian McQuillan left the meeting

10.58am William Humphrey left the meeting

11.37am Paul Maskey left the meeting

Agreed: to write to the panel of Trade Unions to follow up on any information requested during the session.

Agreed: to write to the Minister of Finance and Personnel regarding the position of trade unions in relation to negotiations.

Agreed: that a future evidence session would be scheduled for DFP to provide an update on any negotiations with trade unions.

[EXTRACT]

Wednesday, 2 May 2012
Room 30, Parliament Buildings

Present: Mr Conor Murphy MP MLA (Chairperson)
Mr Dominic Bradley MLA (Deputy Chairperson)
Mr Roy Beggs MLA
Mrs Judith Cochrane MLA
Mr Leslie Cree MBE MLA
Mr Paul Girvan MLA
Mr David Hilditch MLA
Mr William Humphrey MLA
Mr Paul Maskey MP MLA
Mr Mitchel McLaughlin MLA
Mr Adrian McQuillan MLA

In Attendance: Mr Shane McAteer (Assembly Clerk)
Mrs Clairita Frazer (Assistant Assembly Clerk)
Mrs Kathy O'Hanlon (Assistant Assembly Clerk)
Mr Jim Nulty (Clerical Supervisor)
Mr Dominic O'Farrell (Clerical Officer)
Mr Bob Harper (Assembly Research & Information Service)

10.04am The meeting opened in public session.

7. Superannuation Bill

To assist its consideration of the Superannuation Bill, the Committee received a briefing from Assembly Research on the paper, "Consultation: legal requirements and good practice."

11.49am Mr Bradley left the meeting

11.50am Mr Girvan returned to the meeting

11.50am Mr McLaughlin returned to the meeting

11.52am Mr Humphrey left the meeting

The Committee noted correspondence from the Minister of Finance and Personnel regarding the Department's planned engagement with the trade unions on the provisions of the Superannuation Bill.

Agreed: to seek the views of DFP and the trade unions on the issues raised in the Research paper.

The Committee also considered a draft motion to extend the Committee Stage of the Bill until 28 September 2012.

12.01am Mr Leslie Cree left the meeting

12.02am Mr Paul Maskey left the meeting

Agreed: that the motion be laid in the Business Office.

[EXTRACT]

Wednesday, 9 May 2012
Room 30, Parliament Buildings

Present: Mr Conor Murphy MP MLA (Chairperson)
Mr Dominic Bradley MLA (Deputy Chairperson)
Mr Roy Beggs MLA
Mr Leslie Cree MBE MLA
Mr Paul Girvan MLA
Mr David Hilditch MLA
Mr William Humphrey MLA
Mr Paul Maskey MP MLA
Mr Mitchel McLaughlin MLA
Mr Adrian McQuillan MLA

In Attendance: Mr Shane McAteer (Assembly Clerk)
Mrs Clairita Frazer (Assistant Assembly Clerk)
Mrs Kathy O'Hanlon (Assistant Assembly Clerk)
Mr Jim Nulty (Clerical Supervisor)
Mr Dominic O'Farrell (Clerical Officer)
Ms Aine Gallagher (Bursary Student)

Apologies: Mrs Judith Cochrane MLA

10.02am The meeting opened in public session.

4. Superannuation Bill: Committee Stage – Evidence from the Equality Commission

The Committee took evidence from the following witnesses: Eileen Lavery, Head of Advice and Compliance, Equality Commission and Roisin Mallon, Policy Manager, Equality Commission. The evidence session was recorded by Hansard.

10.05am Mr Humphrey joined the meeting

5. Superannuation Bill: Committee Stage – Evidence from the Northern Ireland Human Rights Commission

The Committee took evidence from the following witnesses: Dr. David Russell, Deputy Director, NI Human Rights Commission and Dr. Nazia Latif, Policy Worker, NI Human Rights Commission. The evidence session was recorded by Hansard.

10.23am Mr Maskey joined the meeting

10.23am Mr Girvan joined the meeting

Agreed: that the witnesses will provide any additional information as requested during the evidence session.

[EXTRACT]

Wednesday, 23 May 2012
Room 30, Parliament Buildings

Present: Mr Conor Murphy MP MLA (Chairperson)
Mr Dominic Bradley MLA (Deputy Chairperson)
Mr Roy Beggs MLA
Mr Leslie Cree MBE MLA
Mrs Judith Cochrane MLA
Mr Paul Girvan MLA
Mr David Hilditch MLA
Mr William Humphrey MLA
Mr Paul Maskey MP MLA
Mr Mitchel McLaughlin MLA
Mr Adrian McQuillan MLA

In Attendance: Mr Shane McAteer (Assembly Clerk)
Mrs Clairita Frazer (Assistant Assembly Clerk)
Mrs Kathy O'Hanlon (Assistant Assembly Clerk)
Mr Jim Nulty (Clerical Supervisor)
Mr Dominic O'Farrell (Clerical Officer)

10.02am The meeting opened in public session.

10.03am Mr McLaughlin joined the meeting

8. Superannuation Bill

Members considered the issues arising from the evidence received to date.

The Committee noted a submission from the Chartered Institute of Personnel & Development, official reports of evidence from the Northern Ireland Human Rights Commission and the Equality Commission and a report by the Westminster Comptroller and Auditor General "Managing early departures in central government"

Agreed: to forward the issues identified to the Department for response.

[EXTRACT]

Wednesday, 4 July 2012
Room 30, Parliament Buildings

Present: Mr Daithí McKay MLA (Chairperson)
Mr Dominic Bradley MLA (Deputy Chairperson)
Mr Roy Beggs MLA
Mrs Judith Cochrane MLA
Mr Leslie Cree MBE MLA
Mr Paul Girvan MLA
Mr William Humphrey MLA
Mr Paul Maskey MP MLA
Mr Mitchel McLaughlin MLA
Mr Adrian McQuillan MLA

In Attendance: Mr Shane McAteer (Assembly Clerk)
Mrs Clairita Frazer (Assistant Assembly Clerk)
Mrs Kathy O'Hanlon (Assistant Assembly Clerk)
Mr Jim Nulty (Clerical Supervisor)

Apologies: Mr David Hilditch MLA

10.08am The meeting opened in public session.

4. Superannuation Bill – Evidence Session with Trade Union Officials.

The Committee held an evidence session with Brian Campfield, NIPSA, Billy Lynn, NIPSA, and Harry Baird, FDA. The session was recorded by Hansard.

10.30am Mr Girvan joined the meeting

10.34am Mr Bradley joined the meeting

10.38am Mr McLaughlin left the meeting

10.44am Mr McLaughlin joined the meeting

10.46am Mr McQuillan left the meeting

10.50am Mr McQuillan joined the meeting

10.58am Mr McQuillan left the meeting

11am Mr McQuillan joined the meeting

11.34am Mrs Cochrane left the meeting

11.34am Mr Cree left the meeting

11.36am Mr McQuillan left the meeting

The Committee noted the following papers:

- DFP: response to evidence received to date;
- DFP: response to Assembly Research paper; and
- Submission from Trade Unions.

Agreed: to share the summary analysis table prepared by the Committee secretariat with DFP officials in advance of the next session.

Members questioned the officials on their recent discussions with DFP in relation to the Superannuation Bill.

Agreed: to defer the Shared Services – Assembly Research Briefing to a future meeting.

5. Superannuation Bill – Evidence Session with DFP Officials.

The Committee held an evidence session with Grace Nesbitt, Head of Civil Service Pensions, Margaret Miskelly, Head of Policy, Civil Service Pensions and Margaret Coyle, CHR.

11.59am Mr McQuillan joined the meeting

12.01pm Mr Humphrey left the meeting

Members questioned the officials on the provisions of each clause in the Bill with particular reference to the DFP response. The Departmental officials undertook to provide members with follow-up information as requested.

Agreed: that amendments to the Superannuation Bill should be drafted for discussion at the next Committee meeting on 5 September 2012.

12.40pm Mr McLaughlin left the meeting.

[EXTRACT]

Wednesday, 5 September 2012
Room 30, Parliament Buildings

Present: Mr Daithí McKay MLA (Chairperson)
Mr Dominic Bradley MLA (Deputy Chairperson)
Mr Roy Beggs MLA
Mrs Judith Cochrane MLA
Mr Leslie Cree MBE MLA
Mr Paul Girvan MLA
Mr David Hilditch MLA
Mr Mitchel McLaughlin MLA

In Attendance: Mr Shane McAteer (Assembly Clerk)
Mrs Clairita Frazer (Assistant Assembly Clerk)
Mrs Kathy O'Hanlon (Assistant Assembly Clerk)
Mr Jim Nulty (Clerical Supervisor)
Ms Heather Graham (Clerical Officer)
Mrs Patricia Casey (Bill Clerk) (Agenda items 4-7 only)
Mrs Kiera McDonald (Legal Adviser) (Agenda item 4 only)
Mr Colin Pidgeon (Assembly Research and Information Service) (Agenda item 6 only)

Apologies: Mr William Humphrey MLA

10.06am The meeting opened in public session. .

4. Superannuation Bill – Legal and Procedural Advice.

Members received a briefing from Kiera McDonald, Assembly Legal Adviser, and Patricia Casey, Bill Clerk, on legal and procedural issues relating to potential amendments to the Bill which were under consideration.

Agreed: to forward draft amendments (a) – (c) to DFP for comment in advance of next week's meeting and that no further consideration would be given to draft amendment (d).

11.14am Mr Girvan left the meeting.

11.24am Mr Girvan joined the meeting.

11.26am The Committee moved into open session.

5. Superannuation Bill – Follow-up Evidence Session with DFP Officials.

The Committee held an evidence session with the following DFP officials: Grace Nesbitt, Head of Civil Service Pensions; Margaret Miskelly, Head of Policy, Civil Service Pensions; and Margaret Coyle, Central Human Resources. The session was recorded by Hansard.

Members questioned the DFP officials on the provisions of the Bill and the officials undertook to provide the Committee with comments on the draft amendments as requested.

6. Superannuation Bill – Assembly Research: Further Evidence Briefing.

The Committee received a briefing from the Assembly Researcher on the Further Evidence Research Paper.

7. Superannuation Bill – Initial Consideration of draft Committee Amendments

Agreed: to make final decisions on the potential amendments at next week's meeting.

[EXTRACT]

Wednesday, 12 September 2012
Room 30, Parliament Buildings

Present: Mr Daithí McKay MLA (Chairperson)
Mr Dominic Bradley MLA (Deputy Chairperson)
Mr Roy Beggs MLA
Mrs Judith Cochrane MLA
Mr Leslie Cree MBE MLA
Miss Megan Fearon MLA
Mr Paul Girvan MLA
Mr David Hilditch MLA
Mr William Humphrey MLA
Mr Mitchel McLaughlin MLA

In Attendance: Mr Shane McAteer (Assembly Clerk)
Mrs Clairita Frazer (Assistant Assembly Clerk)
Mrs Kathy O'Hanlon (Assistant Assembly Clerk)
Mr Jim Nulty (Clerical Supervisor)
Ms Heather Graham (Clerical Officer)
Mrs Patricia Casey (Bill Clerk) (Agenda items 4 & 5 only)
Mr Bob Harper (Assembly Research and Information Service) (Agenda item 6 only)

Apologies: Mr Adrian McQuillan MLA

10.06am The meeting opened in public session.

Agreed: that Agenda items 5, 7 and 8 are recorded by Hansard and the Official Report published on the Assembly website.

The Chairperson welcomed Miss Megan Fearon to the Committee and members noted the declaration of interests for Miss Fearon.

4. Superannuation Bill – Final Consideration of Potential Committee Amendments.

Members noted correspondence from the Department commenting on the potential Committee amendments. The Committee deliberated on each of the three potential amendments.

Agreed: that decisions would be taken in relation to the potential Committee amendments to the Bill during the next session on clause-by-clause consideration of the Bill.

5. Superannuation Bill – Clause-by-Clause Scrutiny.

The Committee carried out formal clause-by-clause consideration of the Superannuation Bill as follows:

Clause 1 – Consents required for civil service compensation scheme modification

Agreed: that the Committee is content with Clause 1 as drafted.

Clause 2 – Consultation in relation to civil service compensation scheme modifications.

Members considered two potential amendments to Clause 2.

Agreed: that neither of the two potential amendments will be proposed and that the Committee is therefore content with Clause 2 as drafted.

Members deliberated on a potential amendment to insert a new Clause 3 providing Assembly control over future civil service compensation scheme amendments. As a consensus could not be reached on this potential amendment, the Chairperson, Mr McKay, proposed that the Committee is content to propose to the Assembly that a new Clause 3 is inserted in the Bill as follows:

"Article 3 of the 1972 Order shall be amended as follows.

After paragraph (2) there shall be inserted the following paragraph –

(2A) Any scheme made under this Article, which has the effect of reducing the amount of a compensation benefit, as defined in Article 4, shall be subject to negative resolution."

Question put.

The Committee divided: Ayes 7; Noes 3; Abstentions 0.

AYES

Mr Beggs, Mr Bradley, Mr Cree, Ms Cochrane, Miss Fearon, Mr McKay, Mr McLaughlin.

NOES

Mr Girvan, MrHilditch, Mr Humphrey

ABSTENTIONS

None

Question accordingly agreed to.

Clause 3 – Interpretation

Agreed: that the Committee is content with Clause 3 as drafted.

Clause 4 – Short title & Commencement

Agreed: that the Committee is content with Clause 4 as drafted.

Long title of the Bill

Agreed: that the Committee is content with the Long Title of the Bill as drafted.

Agreed: that an initial draft of the Committee report would be brought back to the Committee at next week's meeting.

Agreed: that the Committee amendment agreed would be tabled for debate at Consideration Stage, as well as any consequential amendments that may be needed following further advice from the Assembly Bill Office.

[EXTRACT]

Wednesday, 19 September 2012
Room 30, Parliament Buildings

Present: Mr Daithí McKay MLA (Chairperson)
Mr Dominic Bradley MLA (Deputy Chairperson)
Mr Roy Beggs MLA
Mrs Judith Cochrane MLA
Mr Leslie Cree MBE MLA
Miss Megan Fearon MLA
Mr Paul Girvan MLA
Mr David Hilditch MLA
Mr William Humphrey MLA
Mr Mitchel McLaughlin MLA
Mr Adrian McQuillan MLA

In Attendance: Mr Shane McAteer (Assembly Clerk)
Mrs Clairita Frazer (Assistant Assembly Clerk)
Mrs Kathy O'Hanlon (Assistant Assembly Clerk)
Mr Jim Nulty (Clerical Supervisor)
Ms Heather Graham (Clerical Officer)

10.05am The meeting opened in public session.

Agreed: that Agenda items 4, 5 and 6 are recorded by Hansard and the Official Report published on the Assembly website.

8. Superannuation Bill – Initial Consideration of Draft Report

Members considered a working draft of the Committee's report on the Superannuation Bill.

12.12pm Mr Hilditch left the meeting.

12.15pm Mr Hilditch returned to the meeting.

Agreed: In welcoming informal notification of the Finance Minister's recent acceptance of the Committee's proposed amendment to the Bill, members agreed that, in advance of the Committee tabling the amendment for debate at Consideration Stage, the Department will be given an opportunity to agree the final wording of the amendment with the Committee, subject to there being no change to the effect of the amendment as already agreed by the Committee.

Agreed: Members will forward any comments they have in relation to the draft report to Committee staff by noon on Friday 21 September.

[EXTRACT]

Wednesday, 26 September 2012
Room 30, Parliament Buildings

Present: Mr Daithí McKay MLA (Chairperson)
Mr Dominic Bradley MLA (Deputy Chairperson)
Mr Roy Beggs MLA
Mrs Judith Cochrane MLA
Mr Leslie Cree MBE MLA
Ms Megan Fearon MLA
Mr Paul Girvan MLA
Mr William Humphrey MLA
Mr Mitchel McLaughlin MLA
Mr Adrian McQuillan MLA

In Attendance: Mr Shane McAteer (Assembly Clerk)
Mrs Clairita Frazer (Assistant Assembly Clerk)
Mrs Kathy O'Hanlon (Assistant Assembly Clerk)
Mr Jim Nulty (Clerical Supervisor)
Ms Heather Graham (Clerical Officer)

Apologies Mr David Hilditch MLA

10.04am The meeting opened in public session.

In the absence of the Chairperson, the Deputy Chairperson took the Chair.

Agreed: that Agenda item 5 is recorded by Hansard and the Official Report published on the Assembly website.

4. Superannuation Bill – Formal Consideration of Draft Committee Report

Members considered the Committee's draft report on a paragraph-by-paragraph basis, as follows:

Agreed: that paragraphs 1-13 stand part of the Report.

Agreed: that paragraphs 14-24 stand part of the Report.

Agreed: that paragraphs 25-27 stand part of the Report.

Agreed: that paragraphs 28-33 stand part of the Report.

Agreed: that paragraphs 34 and 35 stand part of the Report.

Agreed: that paragraphs 36-41 stand part of the Report.

Agreed: that paragraphs 42-49 stand part of the Report.

Agreed: that paragraphs 50-52 stand part of the Report.

Agreed: that the Executive Summary stands part of the report.

Agreed: that the appendices stand part of the Report.

Agreed: that the Report on the Superannuation Bill be the First Report of the Committee for Finance and Personnel to the Assembly for session 2012/13.

Agreed: that the report on the Superannuation Bill be printed.

Agreed: that an extract of the draft minutes of today's proceedings relating to the report is titled "unapproved" and checked by the Chairperson before being included in the Committee report.

Members considered a draft press release on the publication of the Committee Report.

Agreed: that the press release will issue.

[EXTRACT]

Appendix 2

Minutes of Evidence

15 June 2011

Members present for all or part of the proceedings:

Mr Conor Murphy (Chairperson)
Mr Dominic Bradley (Deputy Chairperson)
Mrs Judith Cochrane
Mr Leslie Cree
Mr Paul Girvan
Mr William Humphrey
Mr Ross Hussey
Mr Mitchel McLaughlin
Ms Caitríona Ruane

Witnesses:

Mr Kieran Hargan	*Department of Finance and Personnel*
Mrs Grace Nesbitt	

1. **The Chairperson**: This session is being recorded for Hansard, so there should be no mobile phones in operation. I welcome to the Committee Mrs Grace Nesbitt, who is head of human resources (HR) policy, pay and pensions policy, and corporate HR in the Department of Finance and Personnel (DFP), and Kieran Hargan, from Civil Service pensions branch, corporate HR branch, DFP. Would you like to make a presentation?

2. **Mrs Grace Nesbitt (Department of Finance and Personnel)**: I would. Thank you very much. I welcome the opportunity to meet the Committee to discuss the proposed Superannuation Bill. I have provided a paper to the Committee that sets out the background to the proposed Bill. I attempted to keep it as concise as possible, but I confess that I did not achieve the target of keeping it to one page. I apologise for that at the outset; it is because the area of pensions is very complex. With the Committee's permission, I propose to give a brief overview to help members to better understand the issue. I will then be happy to take any questions. If that is agreeable to the Committee, that is what I will do.

3. In the overview, I will provide members with more information on the context and background to the principal Civil Service pension scheme in Northern Ireland; the membership of the scheme; its current provisions, including the current compensation scheme and the links that we have had with GB; the changes that have happened in GB and the possible scenarios that it faces; and the changes and choices that Northern Ireland faces in respect of parity, cost and industrial relations.

4. I begin with the context and background. At 31 March 2011, the details of the membership of the scheme were as follows: there were just over 34,000 current members, known as active members, contributing to the scheme, and around 8,500 former employees, known as deferred members. Deferred members are people who have left the scheme but have yet to draw their pension. We have around 20,000 pensioners and 5,500 dependants in receipt of the pension.

5. Membership of the scheme is open to civil servants and to the staff of 30 or so public bodies. The range of public bodies includes museums and Assembly offices. I can supply a full list of those bodies if that would be of interest to members. As to the money that the pension scheme handles, last year the scheme paid out just over £232 million in pension and lump-sum payments. That gives you a feel for the amounts of money that the pension scheme deals with.

6. As I have said, the pensions issue is complex. In presenting you with this information, I add the caveat that this is very much a high-level overview. There is a lot of more detailed information that I can provide members with if they are interested. There is also a lot of information on the pensions website, which I can refer you to.

7. The principal Civil Service pension scheme Northern Ireland and its associated schemes are statutory pension provisions that were established by virtue of the Superannuation (Northern Ireland) Order 1972. However, the scheme's provisions changed in 2002. Until then, things were actually relatively simple, and we had only one pension scheme, which became known as "classic". In 2002, things changed, and different schemes, which are now known as "classic plus" and "premium", were introduced. In 2007, we had yet another change when another scheme called "nuvos" was introduced. Those schemes have different contribution rates and benefits. Again, I can provide members with more detail on that if they wish. Suffice it to say that all those pension schemes, with the exception of nuvos, are final-salary pension schemes. The position for new entrants from 2007 is that they can join only nuvos, which is a career-average pension scheme — that is the key difference — and has a retirement age of 65. Again, I can provide more details on that if members are interested.

8. The compensation scheme — again, this is very much a high-level overview — determines the amount of compensation and early pension benefits paid to staff who face either voluntary or compulsory redundancy. In the Civil Service, the compensation scheme is determined by length of service and age of the individual. Under the current provision, compensation payments are generally limited to a maximum of three years' pay. As for who pays for that, all compensation payments and enhanced pension entitlements are recharged to the employers, who then reimburse the pension scheme. The compensation scheme payments are a charge against the employers' departmental expenditure limits.

9. Turning to our links with GB, occupational pension policy in Northern Ireland is a transferred matter. However, in practice and to date, all public service pension schemes in Northern Ireland have generally mirrored GB schemes. That has been for financial, historical and employment portability reasons. It is almost as if there has been an article of faith in our approach to that link with GB, and that has provided for ease of administration. Her Majesty's Treasury has maintained overall responsibility for public sector pensions policy for the UK.

10. I will move on to the changes and what is happening in GB, about which there has been lot of press coverage. As explained, to date, we have maintained parity with GB generally on public sector pensions. The change in the Superannuation Bill is specifically about the principal Civil Service pension scheme. However, I think that it is helpful for members to have a little understanding of the sequence of events in GB and the current position with GB legislation and the pending legal challenges. Again, this is very much a condensed overview.

11. The powers conferred in Northern Ireland by the 1972 Order enable the Department of Finance and Personnel to amend pension and compensation schemes in the Northern Ireland Civil Service (NICS) without the need for primary legislation. The position in GB is identical in that the powers conferred by the Superannuation Act 1972 enable Ministers for the Civil Service in GB to make, maintain and administer pension and compensation schemes for staff in the Home Civil Service by secondary legislation.

12. The Superannuation Act 2010 in Great Britain was developed against the backdrop of protracted negotiations between the Cabinet Office and the Home Civil Service trade unions. Those negotiations were aimed at reaching agreement on a new compensation scheme for the Home Civil Service. Those changes were driven, in part, by the need to remove age as a reference point and to reduce the overall cost of the compensation scheme to the public purse. The previous Labour Government introduced a new compensation scheme for the Home Civil Service in February 2010. That was opposed by the Public and Commercial Services Union (PCS),

which is the largest Home Civil Service union and is generally supported by the Northern Ireland Public Service Alliance (NIPSA) in Northern Ireland. The PCS opposed the terms of the new scheme and mounted a legal challenge against its implementation. The scheme was implemented without union consent, as was required by the terms set out in the 1972 Act. The challenge mounted by the unions was successful and the new scheme was quashed by a High Court decision in May 2010.

13. Subsequently, in December 2010, a number of amendments to the 1972 Act were introduced by the coalition Government in GB. An amendment was made to remove the need for union consent to what was termed "detrimental change" to the compensation scheme. In addition, the Cabinet Office introduced a new compensation scheme for the Home Civil Service and gave effect to it as of 22 December 2010. Matters became a little bit complicated, because the coalition Government introduced and, on the same day, repealed caps on the new compensation scheme, the terms of which were 12 months for compulsory redundancy and 15 months for voluntary redundancy. I will return to that point later.

14. The current terms of the GB compensation scheme — these are broad terms only — which came into effect on 22 December 2010, limit the maximum compensation payment payable to members to 21 months for voluntary redundancy and 12 months for compulsory redundancy. Under our current rules, speaking very broadly, members are entitled to a maximum of three years' pay, so there is a difference.

15. The changes that have been introduced in GB are also subject to legal challenge. In March 2011, the PCS and the Prison Officers' Association (POA) launched a fresh legal challenge against the imposition of the new scheme that had been introduced by the coalition Government in December 2010. The unions in GB are seeking a judicial review on the basis that the manner in which the scheme has been implemented to cut benefits — benefits that, the unions argue, are based on civil servants' accrued service — is in breach of the European Convention on Human Rights. A date for a hearing in the High Court has yet to be set.

16. What does that mean for us in Northern Ireland, and what challenges and choices do we face? To date, the approach has been to maintain parity, and we have a decision to make on that. Any departure from the GB provisions will have financial implications for employers in Northern Ireland. As I said, any payments for people who are leaving are attributed to Departments' budgets. Although we have a separate legislative basis, and we could depart from the GB approach, we have broadly reflected, in our own legislation, changes in GB pension legislation. Whether that approach is maintained is a matter for our Executive to determine.

17. We have been keeping a watching brief on developments regarding the pending legal challenges and the various changes. The view that we have reached is that we need to bring forward legislation. In doing so, I am conscious that we still face uncertainty. I am also extremely aware that pensions are a very sensitive issue with the unions and with staff, who are concerned about the wider changes in pension reform following the Hutton report.

18. I will now turn to the specifics of the compensation scheme. If the result of the latest legal challenge is unsuccessful and the new compensation scheme for the Home Civil Service stands, the Department of Finance and Personnel will, at present, be unable to implement an equivalent and less generous scheme for the NICS without the consent of the NICS trade unions, as is currently required under article 4(3) of the 1972 Order. However, should the unions' legal challenge succeed, it is likely that the Cabinet Office will reintroduce the capping provisions to which I referred earlier, which were introduced by secondary legislation in December 2010 to limit the amount of compensation payments to 12 months'

earnings for compulsory severance and 15 months' earnings for voluntary severance. If the Cabinet Office did reintroduce the limits on the amount of compensation benefits payable, there would be a requirement to introduce equivalent legislation in Northern Ireland to maintain parity.

19. In summary, we are faced with three possible scenarios. The key point is that each of those would require an amendment to our 1972 Order if we are to maintain parity. I attempted to set out the three possible scenarios in the paper that was provided to the Committee.

20. The first possible scenario is that the position in GB remains as it is at present and the legal challenge to the new GB compensation scheme is unsuccessful. In those circumstances, the 1972 Order would be amended by primary legislation through the proposed Superannuation Bill to remove the need for union consent to reduce compensation payments. It is important to note that that amendment would also insert new requirements and require the Department to make an official report to the Northern Ireland Assembly on the consultation that had taken place with trade unions prior to any detrimental change being made to the Civil Service compensation scheme in Northern Ireland. The report would be required to include full details of the consultation that took place, the steps taken in connection with that consultation with a view to reaching agreement with the trade unions, and whether such agreement had been reached. The Civil Service compensation scheme in Northern Ireland could then be amended accordingly by secondary legislation that took the form of a scheme amendment.

21. The second possible scenario is that the union is successful in its legal challenge to the terms of the new compensation scheme in GB during the course of the passage of the proposed Superannuation Bill in the Assembly, and the Cabinet Office decides to reinsert the capping provisions in the Superannuation Act 2010, the changes that it made in December 2010. In those circumstances, we would arrange to table an amendment to the Superannuation Bill to insert similar capping provisions for Northern Ireland in addition to the removal of the need for union consent to reduce compensation payments. There would be no need for secondary legislation in this scenario.

22. The third possible scenario is that the Northern Ireland Superannuation Bill becomes law and the 1972 Order is amended to remove the need for union consent to reduce compensation payments. If the unions were successful in their legal challenge and the Cabinet Office subsequently reinstated the capping provisions in the Superannuation Act 2010, further legislation would be required to insert similar capping provisions for Northern Ireland.

23. **In summary, as regards the recommended way forward, there is the question**: why change now? Indeed, I may have pre-empted a member's question. We have kept a watching brief, and officials have taken the view that now is the time to begin to bring forward legislation to enable us to maintain parity. That is why we propose to amend our Order at this time. I appreciate that this is a complex area. As I have attempted to explain, whatever the outcome of the position in GB, we will need primary legislation to amend our 1972 Order to address the issue of union consent and to introduce the new requirements to enable us to report on the new consultation arrangements with the union that we propose should be put in place.

24. That is a very brief overview of what I appreciate is a complex area. I am happy to provide members with further details on any aspect of pensions that is of interest to them. I am also happy to take any questions that members may have. Thank you for listening.

25. **The Chairperson**: Thank you very much. As you say, it is a complex area, although you pre-empted our discussion

with the simple question of: why? There have been legal challenges, and there are further legal challenges in the offing. The reality is that parity in pay at the lower and middle grades of the Civil Service has already been broken. The Finance Minister has indicated that he is looking at Senior Civil Service pay grades in respect of local economic conditions and breaking parity. Why is the Department rushing in to stick with parity in the area of pensions and compensation when it is already moving away from parity in pay? It is a simple enough question.

26. There has been an ongoing engagement with the unions in Britain. Has there been any engagement between the Department and the unions here? This is a transferred matter, and we are not required to follow parity. You have outlined a lot of the complexities that have dogged the coalition Government's attempt to move in that direction. The simple question is: why, when we can make our own arrangements and are already considering our own arrangements for pay, do we want to follow the coalition Government's arrangements on pensions and compensation?

27. **Mrs G Nesbitt**: It is something that, historically, we have always done, and it has served us well in the past. There are consequences, and it will be for the Executive to decide whether we maintain parity on pensions. Members will be aware that this is one aspect of pensions. There is a lot going on in the whole area of pension reform, so there are bigger questions, and maintaining parity on pensions is but one aspect of it. Parity is a wider issue.

28. The reason that we maintain parity has, historically, been for ease of administration, because the area of pensions is very complex, and I do not want to minimise the cost of setting up our own pension arrangements. It has also served us well as regards portability of pensions, with ease of movement for people who want to transfer their pension from one part of employment to another. I have not had any strong sense from the unions that they wish Northern Ireland to have its own pension arrangement in place, but I add the caveat that I have not had any formal engagement with the unions on that. However, in my dealings with the unions over the years, I have never sensed any wish on their behalf for us to depart from parity.

29. It has been understood that there would be a cost to setting up our own arrangement. We could, because we have our own legislation. It would be a matter for the Executive to decide on. If we do depart and put in place something different, there will be a consequence. To put it very simply, if we decide to have a better public sector pension than we have at present, or the same one — which is better than the compensation scheme in GB — we will have to pay for it out of the public purse. That is the choice that we would have to make in relation to public expenditure in Northern Ireland. I am using "we" in the generic sense.

30. **The Chairperson**: The unions may have a different perspective if the court case in Britain is lost.

31. **Mrs G Nesbitt**: They may have, but, on the general issue of parity, the unions have tended to be at least silently supportive. I have never sensed any strong view from the unions that we should break parity with GB. It has been understood that that is the stance that we have maintained, not just on Civil Service pension schemes but on public sector schemes generally.

32. **The Chairperson**: I am sure that we will hear evidence from the unions at some stage in the process.

33. **Mr Hussey**: I have a couple of questions. At the outset, you clearly identified that there are currently four pension schemes in operation: classic, classic plus, classic premium and nuvos. If somebody is promoted within the Civil Service, do they stay in their original pension scheme or do they have to move to another scheme?

34. **Mrs G Nesbitt**: No, they stay in the scheme.

35. **Mr Hussey**: OK. So I take it that, in technical terms, the original 2002 scheme would have been one of the best available, because it was the older-style, final-salary scheme that would have provided a lump sum and perhaps a two-thirds pension or half-pension on retirement?

36. **Mrs G Nesbitt**: I will defer to my colleague, who has more technical information.

37. **Mr Kieran Hargan (Department of Finance and Personnel)**: I think that you are referring to the 1972 scheme, which is more beneficial to members because, as you say, it provides the final-salary element, whereas the 2007 arrangements involve a career average, so there is no guaranteed lump sum at the end of the scheme. The 1972 scheme is the more beneficial one.

38. **Mr Hussey**: Is the 1972 scheme based on the best of the final three years?

39. **Mr Hargan**: It is indeed.

40. **Mr Hussey**: I should have declared a little technical knowledge on this. I was a financial advisor for a while, so I know a bit about it.

41. The current scheme in Northern Ireland is the scheme that already exists for people who are made redundant. It is this higher scheme that currently applies.

42. **Mrs G Nesbitt**: Yes.

43. **Mr Hussey**: We have not been influenced by what is happening in GB at the minute. If the GB case with the unions is lost, the Government are going to bring another case in GB. We will then have to decide whether to follow that. I presume that, if we do, and a case is decided in a court in GB, that same law will apply here.

44. **Mrs G Nesbitt**: Just to be really clear, we have to decide whether we want to maintain parity with GB. We have our own legislative basis. To date, we have kept a watching brief on the legal challenges in GB to see whether cases are won or lost. GB has a plan, and, under changes made in December 2010, there is a fallback position that it will revert to if this legal challenge is lost. That is what will become law if they lose this legal challenge, which is a worst-case scenario for the benefits payable under the compensation scheme. I suspect that that is what the GB scheme will revert to. That does not mean that we are bound to follow that. However, if we maintain parity, the consequence of that is that we would. That is why we have kept a watching brief to date. That is what we tend to do so that we do not introduce a change and then have to change it again. We had hoped that the legal challenges would be dispensed with by now and that we would have a judgement, but the matter has taken longer than we originally thought, given that the changes came into place in December 2010. We are keeping a watching brief. The outcome of the legal challenge will determine what happens in GB and, in turn, we will be required to make a decision as to what we do around our legislative basis in Northern Ireland.

45. **Mr Hussey**: We are sitting at the minute with a “What if?” scenario. Everything is “What if?” and “dependent on”.

46. **Mrs G Nesbitt**: Yes, and, to elaborate, that is why I have attempted to outline what the scenarios mean. No disrespect to members, but this is a really complex area, and I have tried to outline the scenarios, what the consequences could be for us in Northern Ireland and what action we could take.

47. **Mr Hussey**: I was about to say that it is a very complex area, and you have certainly simplified it as best you can. There are an awful lot of possibilities. I thank you for your presentation.

48. **Mr McLaughlin**: Thank you very much. I appreciate that you have sought to reduce the information down to a digestible document. It was a fair enough effort, but, through no fault of yours, it has not been entirely successful. I think that there is an

information deficit. I do not want to be swamped with information, but to simply tell us that the legal challenge was successful does not actually help us. I would like to know what was challenged and what the legal process found. That has a direct impact on what we might decide to do.

49. I would like to know whether parity is anything more than custom and practice. Is parity a policy of the Executive, or do we look at options when changes are proposed? It is interesting that the Westminster Ministers ran into legal difficulties with this issue. I question whether this was an ideologically driven initiative. Is it a cost-saving exercise? If someone asked me that question, I could not answer it on a factual basis.

50. So, I would like the impacts of the proposed changes presented in tabular form, and I would like to be able to judge whether it is a modernisation of an existing system that is proportionate and that reflects the economic reality or whether it is a cost-saving exercise. What are the collateral implications for the Executive? We do not have that information either. I would like discussion on approaching the issue in a way that maybe reflects our own experience and might, in fact, be helpful to other devolved Assemblies and, for that matter, the Westminster authorities. With all due respect to the presentation, my impression is of a tunnel vision that says that, rather than using our own experience to decide how best to respect the role of trade unions and the rights of civil servants, parity determines how we react when policy changes in Westminster. I do not have any of that information to help to contribute to any decision, and I think that we should press strongly to fill that information gap.

51. **Mrs G Nesbitt**: I can respond with initial comments. I am happy to give you more information.

52. **Mr McLaughlin**: I would like it in writing so that I can have a look at it and consider it.

53. **Mrs G Nesbitt**: Do you want me to respond?

54. **Mr McLaughlin**: Of course; that is always helpful.

55. **Mrs G Nesbitt**: The legal challenge in May 2010 was quite simple. The Labour Government at that time had secured the agreement of, I think, five out of six unions. There was a Council of Civil Service Unions at that time, and one union disagreed. So, it was nearly there. The legal challenge was very straightforward because the terms of the Superannuation Act in GB at that time, the 1972 Act, were very clear that a detrimental change, as it was termed, could not be introduced without the agreement of the union. That was the essence of the legal challenge. So, in one sense, it was no surprise that the unions won the legal challenge. That was the basis of the legal challenge in a nutshell. I can get you more information on that.

56. **Mr McLaughlin**: That seems fairly obvious and is what I assumed had happened. I do not understand why the Government pressed on when they knew that they would lose. So, what is the game plan? There has to be a game plan.

57. **Mrs G Nesbitt**: Their game plan then followed from the sequence of events in December 2010, when the Government changed the terms of the Superannuation Act to remove the requirement for the agreement of the unions. That was the coalition Government's response.

58. **Mr McLaughlin**: Of course, that will now trigger another legal challenge.

59. **Mrs G Nesbitt**: That has now triggered another legal challenge.

60. **Mr McLaughlin**: We would like to see the detail of that judgement.

61. **Mrs G Nesbitt**: That judgement has not happened.

62. **Mr Hargan**: The new challenge is on the basis that pension or compensation is judged as property under human rights. That is the line that the PCS union is

taking. So, the outcome remains to be seen.

63. **Mr McLaughlin**: I do not necessarily want to be negative about the initiative at this stage, because I do not know enough about it. However, at the heart of it is the question: why now?

64. **Mrs G Nesbitt**: We will certainly get you more information about the nature of the current legal challenge. Would you like more information about the previous legal challenge in May 2010 as well?

65. **Mr McLaughlin**: Yes, at least a précis of it so that we can understand the points of principle that have been established. That will be reviewed in the subsequent legal challenge, but we need chapter and verse on that.

66. **Mrs G Nesbitt**: Two points are driving the changes, and I am happy to get members more detail. The first is the response to age discrimination legislation. As I say, at the minute, the reference points in our scheme are length of service and age. So, one of the reasons that the Government in GB introduced the change was in response to age discrimination legislation and to remove age as a reference point in determining compensation payments. The other thing that is driving it is a reduction in the cost to the public purse. Again, I can get members more information on that, and I can provide more information on parity as well. I am happy to do that.

67. **Mr McLaughlin**: What will be the impact of the changes if they are subsequently approved? Will we have any chance to hear from the trade union side? Is it in the Committee's forward work programme? I suspect that, after today's session, we will hear from them.

68. **The Chairperson**: I suggested as much in my remarks. I am sure that we will. This is a very early consultation, and there are a lot of unresolved issues, including legal issues. As part of our consideration, we will want to hear arguments from various interested parties, including the unions.

69. **Mrs G Nesbitt**: The unions are certainly aware of our intentions.

70. **Mr McLaughlin**: Thanks for your indulgence, Chair. Finally, can we take another approach, not necessarily a blue-sky one? We have devolved powers, and there are options, although we might decide not to implement them. However, I think that it is better to consider all our options rather than simple parity, otherwise we may be missing a trick. If a different approach has been considered, I would like information on it. If not, I am surprised, and I would like to see one considered in future.

71. **Mr Hargan**: I will give members a quick example of what is available under the new GB scheme and what the equivalent would be here. Take, for example, a civil servant who earns a salary of £25,000 a year. Under our scheme in Northern Ireland, it is possible for them to receive up to three years' salary. So, they could receive up to £75,000. In GB, the maximum is limited to 21 months' salary, which would equate to £43,750. So, a person on the same salary there would receive over £31,000 less than a person on an equivalent salary in Northern Ireland. Those are the comparative figures.

72. **Mr McLaughlin**: Is there a retrospective element to that?

73. **Mrs G Nesbitt**: No. That is under the change that came into effect on 22 December 2010 in GB.

74. **Mr Humphrey**: Thank you for your presentation, Grace. I have a couple of questions, one of which Kieran has just answered. I want clarity on a couple of issues. You mentioned deferred members. What is a deferred member? Is that someone who was in the Civil Service but who has left its employ?

75. **Mrs G Nesbitt**: Yes.

76. **Mr Humphrey**: Obviously, then, nothing is triggered until that person reaches retirement age.

77. **Mr Hargan**: That is right.

78. **Mr Humphrey**: Kieran made the point about three years' pay for redundancy. Is that regardless of whether redundancy is voluntary or compulsory?

79. **Mr Hargan**: That would be for voluntary redundancy. The terms for people volunteering to leave are more generous than the terms for people who say, "No, I am not going" and whose employer then makes them redundant on a compulsory basis. You will find that the majority of people in the Civil Service volunteer to go because the package is more beneficial. I do not know the reason, but, of course, if people volunteer to go, it looks better for the employer because it does not have to pay them off.

80. **Mr Humphrey**: What is the scenario for someone who is made redundant on a compulsory basis?

81. **Mr Hargan**: Under the new GB terms, there is quite a difference.

82. **Mr Humphrey**: I mean in Northern Ireland.

83. **Mr Hargan**: It is complex. It depends on your length of service and your age, which is factored into our terms. The example that I gave was the maximum that someone could achieve under compulsory redundancy arrangements. However, for voluntary arrangements, it depends on your age. You could not say that there is a rule of thumb for everyone. It depends on a number of factors.

84. **Mr Humphrey**: So, someone who takes voluntary redundancy in Northern Ireland is better off than their equivalent in GB by 15 months' salary.

85. **Mr Hargan**: They would be, yes, because they would get 36 months' salary. That is the maximum. Not everyone would get that because the figure is based on length of service, and age is taken into account in our scheme as well.

86. **Mrs G Nesbitt**: Chair, if it is helpful, when we give you the written submission on cost, we could include some scenarios comparing the two schemes. That may give you some more information.

87. **Mr Humphrey**: It would very much help.

88. **Mrs G Nesbitt**: That may put some meat on the bones, as it were.

89. **Mr Humphrey**: Finally, you talked about the cost of setting up our own scheme as opposed to using the UK-wide scheme. Surely such an arrangement is not realistic in cost terms, especially in the current economic climate? Would those costs not be prohibitive?

90. **Mrs G Nesbitt**: It would be up to our Executive to direct officials as to the policy intent. I would not want to minimise the extra work that that would entail, because significant work goes into that area. That is because pensions a very complex area. We would also have to look at the benefits that would be achieved through departing from the maintaining of parity with GB.

91. It would be interesting to hear what the trade union views are on this, as I am aware that the whole idea of pension reform is not popular with staff or the unions; that much is apparent. However, I have been asked what the reasons are for this change, and the compensation scheme specifically was about age and cost. The Executive have to make the decision on the priorities for expenditure in Northern Ireland and how much we want to spend on a compensation scheme. That is not for me, as an official, to comment on, but I do not want to minimise the cost and the work involved in that.

92. Again, if we are putting in place a more generous scheme, we have to consider whether there is benefit in doing that and whether that is what we should be doing for our staff. I am wearing two hats here, because I am a member of the scheme. We need to consider whether we should have other priorities. Those are matters for the Executive to comment on.

93. **Mr Humphrey**: I do not think that the ordinary man on the street would understand why we should have a

scheme that is unique to Northern Ireland if the costs and the opportunity costs are significantly higher. I do not think that people should be expected to understand it. I do not understand it, given that we are being asked to make considerable savings across government. Why would we even contemplate having a scheme in Northern Ireland if there are considerable cost implications that would mean money from the public purse not being spent on the delivery of front line services?

94. **Mrs G Nesbitt**: You may be right. It may be helpful to say that civil servants in Scotland and Wales do not have their own legislation; they are part of the GB scheme. This is the only devolved Administration that has a separate legislative basis for Civil Servants.

95. **Ms Ruane**: I want to make a couple of comments. I echo what Mitchel is saying in that I think we need further information, and I look forward to receiving that.

96. **Mrs G Nesbitt**: We are happy to supply that.

97. **Ms Ruane**: You mentioned the portability of pensions. I know that there have been discussions at the North/South Ministerial Council about obstacles to mobility between the North and South. Has anything been factored in here? Are there any implications for the portability of pensions North and South?

98. The other brief comment I would like to make is again about prejudice. We must listen to the trade unions, and we will await further information from you, but our practice has been one of general consultation and working with trade unions. Comments about there having been no consultation worry me. We are in a new situation here in the North. We want consultation at different levels on all different aspects of policy, and it worries me if we are moving away from that.

99. The other issue is about whether a new scheme would cost money to set up. We hear presumptions that it may, but it would be useful to hear about costs of setting up those schemes. Have other schemes been set up in other areas, be they public service or Civil Service? Rather than having your opinion that it would cost us more, it would be useful to have some information on that.

100. I am also looking at the area of end-year flexibility. I know it is a different area of work, but the Finance Department is setting up a new scheme for end-year flexibility. Let us not just presume that a new scheme is a problem. Give us all the information, so that we can make an informed judgement, rather than push us down the road of parity without information.

101. **Mrs G Nesbitt**: I am happy to give you information on the costs of setting up the scheme. It will cost to set up our own scheme, if we go down that route, but I cannot give you the quantum of that. One of the other things that we can avail ourselves of at present, because we very much mirror GB, is that, if we have specific queries, we can ask for expert advice and guidance from the Cabinet Office. We do have queries and various appeal routes for people to challenge pension provisions, and that is appropriate. People can also go to the Pensions Ombudsman. If we depart from parity, that would also be lost. I am not saying that we cannot do that; I am just saying that we would have to look at that, and we would also have to set up that source of expert advice. We have that advice at present and we avail ourselves of it regularly. However, I am happy to supply you with the cost. There will definitely be a cost, and I will attempt to give you some idea of what that would be and the consequences. Again, that would be a matter for the Executive to decide on.

102. **Mr D Bradley**: Thank you for your presentation. You said that the main policy considerations behind this were to reduce the payments through the compensation scheme and that, because of age discrimination issues, age could no longer be the reference point for payment. What would the

point of reference be for payment in the future?

103. **Mr Hargan**: It would be based wholly on length of service. For example, under the current scheme, people over 35 years of age receive an extra one month's final pensionable earnings for every full year of reckonable service after the age of 35. Under the new scheme, that will be gone. That has gone under the GB scheme, which has a maximum of 21 months' earnings for anyone who volunteers to go. The age element has gone entirely. Theoretically, you could say that our scheme, as it exists now in Northern Ireland, is not compliant with age discrimination legislation. It is riddled with ageism. Those under the age of 35 who are being made redundant could ask why they do not get an extra one month's final salary. Our scheme is riddled with such examples, and that factor must be taken into account. Regardless of whether we maintain parity or go our own way, we will have to look at the scheme and remove the age factors.

104. **Mr D Bradley**: So it will be based solely on length of service?

105. **Mr Hargan**: Yes.

106. **Mr D Bradley**: Both of you are probably members of the scheme —

107. **Mrs G Nesbitt**: I did say that I was wearing two hats.

108. **Mr D Bradley**: There are some 34,000 members in total, and, presumably, you probably have the best interests of those members at heart. What protections would there be in any future legislation that would reassure members of the scheme that we are not purely moving towards a situation where the compensation can be reduced gradually in the future without much reference to the interests of the members?

109. **Mr Hargan**: The main answer is that there are none. If the legislation changes and it removes the need for trade union consent, it means that, in this case, the Department would have the power to decide what those payments should be. That is if the parity issue is maintained. It is the same for the Cabinet Office in GB, as the Minister for the Civil Service has sole discretion as to what payments should be made to home civil servants. There is no provision for reassuring members in the future. It could be changed again at a later date, and there is nothing to reassure current members that it will not.

110. **Mrs G Nesbitt**: There are two issues. We are talking about the compensation scheme, which is about what happens when people leave through voluntary or compulsory redundancy. I am digressing a bit, but this is an important point: Following on from the Hutton report on pensions, the coalition Government have given a commitment to honour accrued rights. So there are two elements: the pension that you get when you retire, and what you have accrued if you joined a long time ago with your final-salary pension scheme under the classic scheme. Someone who joined the classic scheme will have a final salary pension scheme until whatever date the Hutton reforms become effective, when they become effective and if and when we choose to apply them in Northern Ireland. I want to make this clear. The coalition Government has said that those accrued rights will be "honoured". That is the term used. What we are talking about specifically is the compensation scheme and what you get when you are compulsorily or voluntarily made redundant. I thought it helpful to bring out that point.

111. **Mr Cree**: I will ask about the ageism issue, because that is the big change. I have several other questions. Are all the current schemes final-salary schemes?

112. **Mrs G Nesbitt**: No.

113. **Mr Cree**: Which are the final-salary schemes?

114. **Mr Hargan**: The 2007 scheme, known as nuvos, is a career-average scheme. The 1972 scheme, which is the old scheme, and the scheme introduced for new entrants from October 2002 are

final-salary schemes. The only career-average scheme is the nuvos scheme.

115. **Mr Cree**: We have not yet got a money-purchase scheme?

116. **Mr Hargan**: No.

117. **Mr Cree**: Roughly how many people are involved in the 1972 scheme? That will continue until some future date. It is the most costly one.

118. **Mr Hargan**: How many people are members of it?

119. **Mrs G Nesbitt**: I will have to get you figures for that. It will cover the majority of staff, simply because there has not been a lot of recruitment to the Civil Service since 2007. In the update that I will provide to the Committee —

120. **Mr Cree**: The 1972 scheme ran until 2007 or thereabouts. Most civil servants will be on that scheme.

121. **Mrs G Nesbitt**: Yes. That applies to most of the Civil Service, or rather most of the members, for, as I say, the scheme is not just for Civil Service staff but for staff of other bodies as well. The majority of members are on final-salary schemes.

122. **Mr Cree**: The big thing, as you know, is that virtually no one can afford final-salary schemes any more. That is why, in the private sector, there are very few companies that can afford to pay for them.

123. Can I ask you to bring some information back to us? I wonder how far the situation is complicated by national agreements and taxation law, bearing in mind that it is central. We also have a problem in that our earnings are 80% of the GB average. The benefit of hindsight is a wonderful thing. Unions have a veto on the agreements, whereby changes cannot be made without their approval. That is a big step to take; and, therefore, those rebuttals, by way of legal challenge, come as no surprise at all.

124. It seems to me that we should make haste slowly on this one. There is no point in creating problems for ourselves, especially as the overall scene keeps changing. Does it not make sense to wait until there is a final settlement across the water, hammered out and watertight, and then go for that? We have a moving target in this.

125. **Mrs G Nesbitt**: We do; and the progress of the Bill is also a moving target. The scenarios that I have set out enable us to make changes while the Bill is in passage. That is what we intend to do. It is a judgement call as to how long we wait. We have pointed out that, as our legislation stands, we are vulnerable. That is a real concern for us. It is a judgement call about how long we wait; you are absolutely right about that, and I have pointed that out. As I pointed out in the scenarios, we have the opportunity to make changes and respond to the changing situation during the passage of the Bill. The view is that we need to start down that path.

126. **Mr Cree**: My final point is about the eightieth of the final salary scheme.

127. **Mr Hargan**: It was one eightieth of the final salary scheme in the 1972 section and one sixtieth in the premium and the classic plus in the 2002 section.

128. **Mr Cree**: That is very nice.

129. **Mrs G Nesbitt**: If it is helpful, we can update members with the details of the differences between the schemes.

130. **Mr Cree**: Thank you very much.

131. **Mr Hussey**: Is there an additional cost to members of the premium or classic plus schemes? Do they pay for the one sixtieth?

132. **Mr Hargan**: It is 3·5% of salary, whereas the 1972 section is 1·5% of salary.

133. **Mr Hussey**: They are paying for that?

134. **Mr Hargan**: Yes.

135. **The Chairperson**: There are obviously quite a lot of questions about all this. The Finance Minister is going to the Executive tomorrow to kick-start the

process. This is something that the Committee will want to continue to examine in some detail. We remain to be convinced that it is not getting ahead of itself, given that it is such an important issue.

136. **Did you say that the scheme here is more generous in certain ways, both for compensation and pension?**

137. **Mr Hargan**: No, it is just the compensation.

138. **The Chairperson**: How does that affect parity, if there is a more advantageous compensation scheme here?

139. **Mr Hargan**: Parity would be broken if we had a different —

140. **The Chairperson**: But it is currently broken.

141. **Mr Hargan**: It is currently broken, but we are looking to see whether we can bring it into line, if we get the go-ahead. However, that will be an Executive decision, as Grace said.

142. **The Chairperson**: If we have broken parity on the lower and middle levels of pay, are we looking at issues that may break parity in relation to senior levels of pay? We do not follow parity in relation to compensation, but now we are being asked to get into a process that is about following parity.

143. **Mrs G Nesbitt**: To clarify matters, the policy to date has been to follow parity on pensions. The reason that we have not moved on the compensation scheme is because we have kept a watching brief. Our intent has been to maintain parity, and that is normally done through secondary legislation, which would not come to the attention of the Committee. A raft of other changes has been made through secondary legislation — there have been 30 or 40 minor changes over the past few years — to maintain parity. This particular change requires primary legislation, and, because of the legal challenges, we have adopted a pragmatic, wait-and-see approach. The point at which we have to start moving has now arrived. The policy intent has been to maintain parity, and whether we continue in that manner is a matter for the Executive. It is not for me, as an official, to determine.

144. **The Chairperson**: OK. Thank you very much. I assume that your evidence paper is not restricted, and that, were we to take evidence from others, we could share your information with them in advance of asking them questions?

145. **Mrs G Nesbitt**: Yes, that is fine. There is nothing in that paper that has not been discussed, at least informally, with the unions. There is nothing that the unions are unaware of.

146. **Mr McLaughlin**: I thought that you were going to tell us they were content; that would have been a first.

147. **Mrs G Nesbitt**: Well, pensions are a difficult issue.

148. **The Chairperson**: OK. Thank you very much.

7 March 2012

Members present for all or part of the proceedings:

Mr Dominic Bradley (Deputy Chairperson)
Mr Leslie Cree
Mr Paul Girvan
Mr Paul Maskey
Mr Mitchel McLaughlin
Mr Adrian McQuillan

Witnesses:

Ms Margaret Coyle	*Department of Finance and Personnel*
Ms Margaret Miskelly	
Mrs Grace Nesbitt	

149. **The Deputy Chairperson**: Good morning, ladies. We do not often have an all-female group of witnesses before us; I think that this is the first time. You are very welcome. Do you want to introduce yourselves?

150. **Mrs Grace Nesbitt (Department of Finance and Personnel)**: My name is Grace Nesbitt. I am head of Civil Service pensions. My role has changed slightly, and I will explain that because I have appeared before the Committee on other matters in the past. I am now focusing more on pensions, given the raft of work there. I will pass over to my colleagues to introduce themselves.

151. **Ms Margaret Miskelly (Department of Finance and Personnel)**: My name is Margaret Miskelly. I was formerly head of Civil Service pensions. Over the past couple of months, I have been concentrating on policy and legislation.

152. **Ms Margaret Coyle (Department of Finance and Personnel)**: I am Margaret Coyle from Civil Service pensions. I work on the policy and legislation aspect.

153. **The Deputy Chairperson**: Thank you very much. I remind members and people in the public gallery that the session is being recorded for Hansard and urge you to switch off any electronic devices. Please make your presentation. Grace, do you want to begin?

154. **Mrs G Nesbitt**: Thank you very much. I welcome the opportunity to update the Committee on the Superannuation Bill. There will be time at the end to take questions and comments from members.

155. I previously briefed the Committee on this issue on 15 June 2011, which seems a long time ago now. I provided detailed further written information to the Committee prior to our meeting again on 29 June 2011. A paper was also forwarded to the Committee in advance of today's meeting, and it sets out the current position in Northern Ireland. That paper includes information on the legal challenge that was brought by the Public and Commercial Services Union (PCSU) and the Prison Officers' Association (POA) in Great Britain against the changes to the home Civil Service compensation scheme that were introduced as a consequence of the Superannuation Act 2010.

156. At our last meeting on 15 June 2011, there were three options to consider, depending on the outcome of the legal challenge. It might be helpful if I elaborate on those and give you a verbal update. The legal challenge was unsuccessful, which confirmed option 1, as listed in the evidence session, as the way forward. To remind members, option 1 is to proceed with the Superannuation Bill and then amend the Civil Service compensation scheme Northern Ireland. That brings us up to date with what was happening in GB.

157. Closer to home, on 7 July 2011, our Executive agreed a paper, the key recommendations of which were: to amend the Superannuation (Northern Ireland) Order 1972; to remove the need the for union consent; to introduce detrimental changes to the current terms of the Civil Service compensation scheme Northern Ireland; and to introduce requirements for the

Department of Finance and Personnel to report on its consultation with unions with the aim of reaching agreement on any such changes.

158. In line with the Executive agreement that was reached in July 2011, the Office of the Legislative Counsel was instructed to proceed with drafting the Superannuation Bill. That work has now been completed, and the Attorney General's Office has confirmed legislative competence. The Bill will remove the need for union consent to introduce detrimental changes to the terms of the Civil Service compensation scheme Northern Ireland. That will position the Department of Finance and Personnel to align the amount of compensation payable to Northern Ireland Civil Service (NICS) staff and other members of the scheme who are covered by NICS pension arrangements with that payable in Great Britain.

159. I will remind members of the key changes under the scheme. It should be noted that the maximum compensation payable under the new compensation scheme provisions is as follows: staff leaving on voluntary redundancy will receive a maximum of 21 months' salary, while those leaving on compulsory redundancy will receive a maximum of 12 months' salary. Pensions are a complex issue, and, under current terms, people generally — I emphasise the word "generally" — receive up to three years' pay. Broadly speaking, that is the difference.

160. There will be new arrangements for engagement with the unions. The provisions of the Superannuation (Northern Ireland) Order 1972 will be amended in relation to consultation with trades unions on changes to the Civil Service compensation scheme in Northern Ireland. That will mean that, before making any amendment that would reduce the amount of compensation benefit, the Department of Finance and Personnel will have a duty to consult the unions with a view to reaching agreement. If an amendment scheme reduced the amount of compensation payable, the Department of Finance and Personnel must have laid before the Assembly a formal report that will provide information about the consultation that took place for that purpose; the steps that were taken in connection with that consultation with a view to reaching agreement on the issue; and whether such agreement has been reached. The Finance Minister issued an executive paper together with a copy of the legislation and the explanatory and financial memorandum to his Executive colleagues, and that was considered and agreed by the Executive on 23 February 2012.

161. I said last time that a pensions forum had been established. It has membership from the main unions involved, such as NIPSA, the industrial unions, and the First Division Association (FDA), and it has met to engage on the raft of changes that we face on pensions, of which this is just one. The present position on consultation is that, under article 3(2), the Department of Finance and Personnel must consult with persons appearing to the Department to represent persons likely to be affected by the making of an amendment to the Civil Service compensation scheme in Northern Ireland through secondary legislation. That is exactly what we are doing. That gives you an update on GB and where we are at now.

162. What are the next steps? The Minister has written to the Speaker enclosing a copy of the Bill and the explanatory and financial memorandum to confirm legislative competence. As the Committee will be aware, First Stage is scheduled for 12 March and Second Stage is scheduled for 26 March. As I said, engagement with the unions will continue through the pension forum. The pension forum has been regularly updated. We had a meeting on 12 December, and, on 1 March this year, it was issued with an update letter informing it that the Executive had agreed on 23 February to introduce the Bill in the Assembly as a first step in the legislative process and that the Minister is now in the process of presenting the

statement of legislative competence, the explanatory and financial memorandum, and the Bill to the Speaker for First Stage. Following Royal Assent and before making the amendment and the changes, we will continue to consult the unions. Employer pension notices will be issued to all staff and members of the scheme to inform them of the date of the amendment when it becomes law and on the changes to the Civil Service compensation scheme in Northern Ireland.

163. Immediately after Second Stage on 26 March, the Bill will be passed to the Committee to carry out detailed investigations and to report to the Assembly. The report will be copied to the Department and to officials, who, I understand, will have a minimum of five working days to consider it before Consideration Stage. Colleagues from Civil Service pensions and I are, of course, available to attend further meetings to update the Committee on this process and on any other aspects of the Superannuation Bill. That is a brief overview and summary of where we are in GB and what has happened here to date. The next step is the legislative process. I am happy to clarify any points or take any questions. If there are any specific points, I would defer, with your permission, to my colleagues.

164. **The Deputy Chairperson**: Thank you very much. You said that the legal challenges in GB were unsuccessful. I take it from that that the GB Superannuation Act is being adopted here, largely without revision. During your previous session here, some members asked why the Executive would follow parity as a rule with regard to pensions and compensation when there was a movement away from parity on pay for the lower and middle grades of the Civil Service. Did the Department give any detailed consideration to the pros and cons of options other than slavishly following parity?

165. **Mrs G Nesbitt**: We presented the options to the Minister, and his view was that there would be a cost if we did not follow parity. As I set out in the update to the Committee, if we departed from parity with GB the cost would affect Departments' departmental expenditure limits. There would be an immediate cost in the benefits actually payable to people and there would be a cost for different legislation, different administration systems and our whole IT system, which is based on parity, and I set that out in more detail in my written update to the Committee on parity. There are two issues with not following parity. To answer your question, yes, it was considered, and it was considered on the grounds of cost. The cost falls into two broad issues: the benefits actually payable; and the costs of administering the scheme, which includes several factors. There is also the issue of mobility and transfer across all public-sector schemes, and that is a link that we and the Northern Ireland Executive have chosen to maintain.

166. **The Deputy Chairperson**: I think that you put a figure on that in June.

167. **Mrs G Nesbitt**: I do not think that we put an exact figure on it, but I can check and return to the Committee on it.

168. **The Deputy Chairperson**: What consultation has taken place with the trades unions, since this removes their veto on some issues? What steps were taken to reach agreement, and what was the outcome?

169. **Mrs G Nesbitt**: The trade union side was consulted and told of the proposed changes that we were making. To date, the trade union side has not formally responded; therefore, I have not received anything formally from it. From our previous session, I understood that the Committee proposed to invite the trade union side to attend, although I am not sure whether that has happened. However, I know that the views of the trades unions were raised at the last session.

170. **The Deputy Chairperson**: Are you saying that you have had no formal response from the trades unions?

171. **Mrs G Nesbitt**: I have not had a formal response. However, I know that they

would not be supportive of it, but they have not given me a formal written response to the changes to date. They have been given a copy of the draft Bill, and they are certainly aware of the changes. We have told them, and they have been informed, but I have not received a formal written response from the trades unions.

172. **The Deputy Chairperson**: Paragraph 6 of your paper of 15 June pointed out that DFP can make amendments to the scheme that are not subject to parliamentary procedure in the Assembly through the usual negative or affirmative resolutions. Why is that, and could that be changed in the Bill to provide the safeguard of the Assembly's having some control over the scheme amendments?

173. **Mrs G Nesbitt**: Sorry, give me a moment. Are you referring to my submission for this session?

174. **The Deputy Chairperson**: I am referring to a previous evidence session of 15 June, which related to the proposed superannuation Bill. At that session, you said:

"The powers conferred by the superannuation Northern Ireland Order 1972 enable the Department of Finance and Personnel to amend the pension compensation schemes for staff in the NICS, without the need to do so through primary legislation. The position in GB is identical in that powers conferred by the Superannuation Act 1972 enable the Minister for the Civil Service in GB to make, maintain and administer pension and compensation schemes for staff in the Home Civil Service by secondary legislation."

175. The prevailing rationale was that if the PCS legal challenge failed, an equivalent scheme could be introduced for NICS relatively quickly by way of a scheme amendment, which is made in secondary legislation and is not subject to parliamentary procedure in the Northern Ireland Assembly. Could that be changed in the proposed Bill to provide the safeguard of the Assembly's having some control over the scheme amendments?

176. **Mrs G Nesbitt**: That matter has not been considered by officials or by the Minister.

177. **The Deputy Chairperson**: It is possible that such arrangements could be included in the Bill.

178. **Mrs G Nesbitt**: I am sure that it could be considered, but, to date, it has not been.

179. **Mr Girvan**: Thank you for your presentation. It would be foolish to break parity because the funding for some of the changes that would be made if we were to go ahead with that would probably come out of our block grant, as opposed to other ways of trying to work on it.

180. In relation to age discrimination, I appreciate that special calculations are made when someone is over 50, and I think that the calculations change quite dramatically from 50 onwards. Has that ever been challenged? You mentioned a legal challenge, but has that ever been looked at legally to see whether it is age discriminatory?

181. **Mrs G Nesbitt**: That was one of the reasons behind the change that was introduced in GB; it is also one of the reasons why we need to change the terms of our scheme. That was the thinking behind the changes, so we would be changing the terms of our scheme to align completely with GB to remove that risk. I am not aware of any challenges to our scheme in relation to age discrimination in respect of retirement. I am also not aware of any challenges in GB, but that is not to say that there have not been any. However, it is a vulnerability, and it was one of the reasons why GB introduced the change.

182. **Mr Girvan**: To come back to the Chairperson's point about unions, I find it unusual that the unions are not engaging. I appreciate that it will have an impact, and they will probably kick up a bit of a stink and make a bit of noise about it after it has been arranged and agreed and put forward as a Bill. Have the unions been engaging in this process in GB, or is it just in

Northern Ireland where they have not communicated with us?

183. **Mrs G Nesbitt**: It may be best for the Committee to engage with the unions directly to get their point of view. However, it is known, so I can report it to the Committee, that NIPSA aligns with the Public and Commercial Services Union in GB, and PCS has been very vocal in challenging the Government's pension reform, including this particular issue.

184. PCS led the legal challenge that failed. NIPSA is well aware of the issues and would have supported that legal challenge; it works very closely with PCS at a national level and understands the issues. Perhaps that is why it has not responded; however, you would have to ask it directly why it has not done so.

185. **Mr Girvan**: There have been changes to the pension plan over the years, and you have moved from the classic to the premium classic scheme, and all those changes have met with some opposition. I think that I am right in saying that pensioners were entitled to a lump sum of three eighty fifths under the classic scheme. That has changed so that pensioners can commute only 25% as a lump sum if they wish and take a reduced pension. On the basis of the previous negotiations with the unions, how long are we looking at between this being brought forward and its being implemented? Is there a window? We would like to get some indication of how far along the road we are.

186. **Mrs G Nesbitt**: We are probably talking about early next year before this change is given effect, although that is an indicative timescale and I would not like to be held to it. However, that would be the overall timescale for us to go through the various processes and stages that are required to introduce the legislation.

187. **Mr Girvan**: Therefore anyone who wants to take voluntary redundancy should do so now.

188. **Mrs G Nesbitt**: I could not possible comment. *[Laughter.]*

189. **The Deputy Chairperson**: To clarify, will the Bill be open to the full scrutiny of the Committee and the Assembly and not proceed through accelerated passage?

190. **Mrs G Nesbitt**: Unless someone else gives a different view or a different decision is made, that would be our intention as officials.

191. **The Deputy Chairperson**: Paul mentioned the unions. The PCS in GB sought a judicial review on the basis that the scheme would cut benefits that are based on civil servants' accrued service; it argued that that would be in breach of the European Convention on Human Rights. In June, you told us that a date had been set for that judicial review in the High Court. Have you consulted the Northern Ireland Human Rights Commission?

192. **Mrs G Nesbitt**: We have not. The unions failed in their legal challenge.

193. **The Deputy Chairperson**: Do you feel that that is unnecessary because the judicial review failed?

194. **Mrs G Nesbitt**: That is correct.

195. **The Deputy Chairperson**: During the evidence session in June, it was stated that there were some variances between the terms of maximum compensation in Northern Ireland and in GB and that they were more generous here. Will that still be the case after the passage of the Bill? Are there any other variances between this version and the GB version of the Bill?

196. **Mrs G Nesbitt**: No. There are variances because we are not aligned with GB; once we are aligned, those will no longer exist.

197. **The Deputy Chairperson**: Will that reduce those generous compensation payments?

198. **Mrs G Nesbitt**: It will align us with what GB has now.

199. **Mr P Maskey**: Thank you for your presentation. No matter how you look at it, this is another smash and grab of people's pensions and rights by the British Government. You said that there

would be a cost if we do not implement this. Do you have a figure for that?

200. **Mrs G Nesbitt**: No. We do not know how many people would leave under any voluntary or compulsory scheme. There are no plans for any scheme in the future. It would be difficult to calculate that figure, as we do not know when or if the need would arise. We do know that there would be a cost, but I cannot give you a figure for it. At the last session, I said that I would provide more information on the types of cost that we would incur, and there would be a cost for the administration and legislation —

201. **Mr P Maskey**: Do you know what they are?

202. **Mrs G Nesbitt**: I cannot give you an exact figure, but it would be significant.

203. **Mr P Maskey**: As the Committee is scrutinising the Bill, that information is important to work out the real costs, so it is something that I would like to see. Say that 100 people were to join the scheme; you can work it out from that base and calculate upwards. That would give us something to think about and an idea of what we are looking at.

204. **Mrs G Nesbitt**: I should elaborate by saying that there are two costs. There are the costs if we decide to depart on this issue, whether or not we need to deploy the new terms. If we decide to break parity now, there will be the cost of the new systems, structures and processes that we will need to put in place, whether we ever need to avail ourselves of those terms and apply them because someone leaves voluntarily or we go down the route of compulsory redundancy. There is a cost there but one on which it is difficult to put an exact figure. It would also be difficult to put a figure on "what if?", because, at this point, we do not know what the shape of the Civil Service will be, should we require a voluntary or compulsory redundancy scheme in future. I can tell you, with absolute certainty, that there will be a cost if we depart, but it is difficult to calculate. As I detailed in my most recent written submission, there would be a cost.

205. **Mr P Maskey**: I appreciate that there will be a cost; there is no matter what you do in life.

206. **Mrs G Nesbitt**: Yes.

207. **Mr P Maskey**: Cost is the important point. It would be useful information for the Committee to have when considering the Bill. I urge you to look at that. I ask that because, if a local union took and won a legal case here, we would need to know what those costs would be. Has that been discussed in the Department?

208. **Mrs G Nesbitt**: It has not, because I think that that scenario is highly unlikely. Without rehearsing the challenge in GB, in my view as an official, the issues on which a local union would challenge the changes that we were making would have to be the same as those in GB, because we propose to make the same changes. The challenges would have to be made on the same grounds, and those challenges were defeated at judicial review in GB. Therefore it would be highly unlikely that a local union would invest its time and resources in such a challenge, particularly as the main local union, NIPSA, supported PCS in its national, GB challenge. Unfortunately from the union's perspective, that challenge failed. As an official who deals with the unions, I think that it would be extremely unlikely that a local union would mount such a challenge. In dealing with the unions at the pension forum, I have had no sense that they are considering a judicial review of or mounting any other legal challenge to the changes.

209. **Mr P Maskey**: That may be the case, but you should have all your options in place in case that arises. You may be in court with a different judge who may give a different ruling, and there may be different technical issues here because there are some slight differences in grievances here and in Britain. It needs to be well thought out. I am sure that the Committee will hear from the unions. The pay issue may not come up, but it would be useful to have that information.

210. **The Deputy Chairperson**: I asked earlier about the pros and cons of maintaining, or moving away from, parity. Surely, some form of accurate costing would be useful in making such decisions.

211. **Mrs G Nesbitt**: We can look at that again. My colleague has reminded me that NIPSA financially supported the PCS challenge, so I think that it would be unlikely that NIPSA — the main union here — would mount another challenge locally on what is, in effect, the same issue.

212. **Mr Girvan**: I appreciate that there would be one-off costs; I just wonder about the continuation costs over time. It is not a matter of having to pay the costs now; it is about how the continuation of paying is dealt with. If we broke parity, you would have to fund it from another source because you are effectively thumbing your nose at the previous system, so you take it back. Is that correct?

213. **Mrs G Nesbitt**: That is correct. It is not just the one-off costs of setting up the system; it is the ongoing costs of overall advice and guidance and looking at precedent and how things are handled. I cannot emphasise enough how complex pensions are. I do not mean to insult anyone's intelligence, but every case has its own nuances and issues to consider. We have detailed scheme rules, and it has been extremely helpful to us in the past and has served us well to have other sources of expertise to go to. Our scheme membership is quite small, and others who have more experience in dealing with issues and what happens when cases go to the Pensions Ombudsman, for example, can share the experience of other precedents and how that has been handled.

214. **You are absolutely right**: there would be one-off costs in setting it up. Pensions are linked, so changing one piece of the jigsaw will have a knock-on effect through all the other strands of pensions and benefits. With your permission, Chairperson, I will elaborate a little: the other issue if we go down the route of what I loosely term the wider Hutton review relates to the coalition Government's plans to link the changes in retirement age for scheme members to state pension age. I know that that is another issue with the reform of the benefits system, and I am not going to get into that because it is not my area, but you can see how things are linked.

215. We have the authority in many areas to break those links because of our legal set-up. However, such a choice would bring a consequence: cost. Those decisions are not for me to make, but we have those issues to deal with and we have those decisions to make. The question is whether we want to spend more money in Northern Ireland on pensions and pension provision through a voluntary scheme, a compulsory scheme or other pensions issues, or whether we want to spend our money on something else. Those are not decisions for me to make; they are for our Executive to make in the round, bearing in mind other things. That is absolutely appropriate, because it is not within my remit.

216. **Mr McLaughlin**: Thank you very much. Are there any categories or grades of civil servants who would be unaffected?

217. **Mrs G Nesbitt**: No. All in it together.

218. **Mr McLaughlin**: There are two schemes. Is it true that in the past the union side generally tracked what happened in Westminster and perhaps preferred that particular approach?

219. **Mrs G Nesbitt**: In my opinion, yes.

220. **Mr McLaughlin**: There was engagement over the equal pay issue, which was a local negotiation in interpreting or applying legislation that was passed at Westminster. Does that set a precedent for us to consider? I can understand the sense that you have that the unions continued to track progress at Westminster and had effectively joined the legal challenge, but it does not necessarily rule out them going for a local solution to this problem.

221. **Mrs G Nesbitt**: As I have made clear to the Committee, and I would not want to be seen to mislead the Committee

in any way, it does not rule that out. However, we have taken stock of this because we are mindful of the unions and engage with them in a very professional and meaningful way. My assessment is that they would not mount a legal challenge because of the history to date and because they have paid out money to support a challenge that, from their perspective, unfortunately failed.

222. I want to go back to your point on equal pay. I am going back to wearing my old pay hat, but we already pay differently and did so even before equal pay became an issue. Our pay system below SCS was certainly different from that in GB. For equal pay, you have to look at what is happening in your workforce, and that is part of the equal pay legislation that any employer has to look at. I do not see an exact read-across from what we had to do with the equal pay settlement to what we are doing with pensions.

223. **Mr McLaughlin**: I was teasing out whether particular protections or statutory instruments that we have here as part of the political settlement give rise to different outcomes or different responses. There has already been reference to the chair of the human rights legislation and the equality legislation. That might at least indicate that, over time, there might be a divergence from previous practice, and this might be the time.

224. **Mrs G Nesbitt**: It could emerge over time. However, in my view, as an official, this is not the time, and it does not seem to emerge from our consideration of the issues and even from any engagement that I have had with the unions to date on the issue.

225. **Mr McLaughlin**: I have not detected it.

226. **Mrs G Nesbitt**: They can speak for themselves; I am loath to comment on the unions' perspective.

227. **Mr McLaughlin**: We will ask them.

228. **Mrs G Nesbitt**: That would be better.

229. **Mr McLaughlin**: Reference has been made throughout to the cost. The cost can be an impressive leverage, and it can be said that there will be a cost attached. Can we be more precise about what the cost will be? Perhaps we could have a matrix that reflects the impacts of the changes across the significant grades. That would allow people to know what we are talking about.

230. **Mrs G Nesbitt**: We will look at giving you some sort of costs. However, I will add a caveat, because I am loath to give a cost that I cannot stand over. That is why I am hesitant about the cost. I can give you an indicative cost. I will also look at the costs of some examples and at what people would get under the current scheme. I think that we gave the Committee some examples already that we can revisit, and you might want to multiply those up in numbers.

231. I am not saying that there will be a voluntary or a compulsory scheme in the Civil Service; I would not want that to be misunderstood. I want to be careful and emphasise to the Committee that there are two issues to the cost: that of setting up the machinery, if I can describe as that, for doing things differently; and the cost of actually doing things differently. Voluntary and compulsory redundancy is a very sensitive issue, and I have no sense at all that there is a requirement to use the scheme. I would not want people to become anxious or to be misled, and I would not like anything to appear that would concern staff. I can give you an indicative costing, but I must emphasise that it will be as an example. I am happy to look at that and to say, "If x number of people left under the old scheme, it would cost this; if x number of people left under the new scheme, it would cost that." I am also happy to give some broad figure about the administration, with caveats, if that would inform the Committee.

232. **The Deputy Chairperson**: Whatever way you put it, it amounts to higher contributions and lower compensation.

233. **Mrs G Nesbitt**: Contributions are a completely separate issue, because this change was not related at all to the increase in contributions. I can appreciate any confusion, but this was a separate change that was brought in by the coalition Government in December 2010. In Northern Ireland, we waited to see the outcome of the various legal challenges so that we did not do something only to find that we had to undo it because of a successful legal challenge. This has absolutely nothing to do with the increase in contributions.

234. **You are absolutely right**: the individual member of the scheme will say that they are changing this and that, and that they are changing the contribution rate and, potentially, there are other changes as well, and it is all happening at the same time. What has happened with the legislative process in GB is unrelated. In fact, this was a throwback to the previous Labour Government, believe it or not, as I explained in our first appearance to the Committee on this issue.

235. **Mr McLaughlin**: Sorry. I have forgotten my last question. It might come back to me.

236. **Mrs G Nesbitt**: Perhaps I answered it.

237. **Mr McLaughlin**: You did pick up on some of my secondary thoughts. However, I had another question. It might come back to me.

238. **The Deputy Chairperson**: We will go to Leslie, but if you want, we will come back to you, Mitchel.

239. **Mr Cree**: I am persuaded of the logic of parity. I would need to hear a strong argument for any changes because much more is involved than simply any particular single issue. In that case, the entire question of final-salary pension schemes is a big one. Basically, no one can afford them anymore. Therefore, compared with local government and the Civil Service, few people in private industry have final-salary schemes that are as attractive as those schemes. I understand the need for change, albeit one that nibbles at the margins. If I could digress slightly, there was an appeal on the pension increase and the argument about RPI versus CPI. Has it been heard yet?

240. **Mrs G Nesbitt**: That challenge failed.

241. **Mr Cree**: That is the one to which you referred.

242. **Mrs G Nesbitt**: No; that challenge failed as well. There will probably be a further appeal to the Court of Appeal. That judicial review failed. There were several judicial reviews. I understand that the unions are considering a further appeal to the Court of Appeal on the issue of the indexation link.

243. With members' permission, I would like to wind back a little to explain. I want to make it absolutely clear: the move from final-salary to career-average pensions is not part of the change in the Bill. That is part of what I term very simply as the wider Hutton reform. The Executive have yet to decide on that matter for Northern Ireland. The changes that we are dealing with specifically this morning are those that will affect how we engage with unions on changes that we make and will allow us to change the compensation scheme. The compensation scheme will affect what we actually pay people who leave either on a voluntary or compulsory basis. The Bill will not change at all the move away from final-salary to career-average pensions; it has no impact on that at all. I want to clarify that point.

244. **Mr Cree**: That is fine. However, it is the background to it all. You are talking about a final-salary scheme that still remains. These are what I call nibbling around the edges — compensation for redundancy. It is as simple as that.

245. **Mrs G Nesbitt**: Yes. However, that was an unrelated change before the change away from final-salary to career-average pensions.

246. **Mr Cree**: There may be other changes.

247. **Mrs G Nesbitt**: Yes. The wider Hutton reform is a significant reform of the entire pension scheme. However, as I said earlier, it is part of the whole

picture to individual members. This is Northern Ireland catching up with change that has already been on the books in GB for a considerable time.

248. **Mr Cree**: It is important that we have the entire background and are also informed of things to come.

249. **Mrs G Nesbitt**: Yes. Absolutely. From the point of view of scheme members, I appreciate fully that it does not really matter, in a sense, what is part of what; they just see that there are a great many changes that affect them. I am very conscious of that.

250. **The Deputy Chairperson**: OK. Thanks very much. You will be back with us. Mitchel, do you want to come back in?

251. **Mr McLaughlin**: Yes, I am back.

252. **Mr Cree**: You had a senior moment there.

253. **Mr McLaughlin**: I get more and more of them. *[Laughter.]*

254. **Mrs G Nesbitt**: We will not call them senior moments.

255. **Mr McLaughlin**: That is exactly what they are. I am very interested in the statistical pattern of opt-out.

256. **Mrs G Nesbitt**: Do you want me to move on and talk about contributions now, or do you want to stay on the subject of superannuation?

257. **The Deputy Chairperson**: Will we cover that in the next session?

258. **Mrs G Nesbitt**: Yes.

259. **The Deputy Chairperson**: We will leave it for the next session in that case.

260. **Mrs G Nesbitt**: I am happy to take it now.

261. **The Deputy Chairperson**: We will just finish with the Superannuation Bill. You will talk to us again during the scrutiny of the Bill. Thank you very much for your presentation this morning.

27 March 2012

Members present for all or part of the proceedings:

Mr Conor Murphy (Chairperson)
Mr Dominic Bradley (Deputy Chairperson)
Mr Leslie Cree
Mr Paul Girvan
Mr David Hilditch
Mr William Humphrey
Mr Ross Hussey
Mr Paul Maskey
Mr Mitchel McLaughlin
Mr Adrian McQuillan

Witnesses:

Mr Jim Caldwell	*FDA*
Mr Alan Perry	*GMB*
Mr Brian Campfield Mr Billy Lynn	*Northern Ireland Public Service Alliance*
Mr Gareth ScotT	*Unite*

262. **The Chairperson**: You are very welcome. We have Brian Campfield, general secretary of NIPSA; Billy Lynn, a member of the general council of NIPSA; Jim Caldwell, secretary of the FDA; Gareth Scott, regional organiser for Unite; and Alan Perry, organiser for GMB. Another member was due to attend, but he is unable to make it. We have had some discussions on the Superannuation Bill prior to your coming in. The Second Stage was debated in the Assembly yesterday. We are now moving into the Committee Stage, during which we intend to hear a range of evidence from stakeholders, people who have an interest and people who may be affected by the Bill. You are all very welcome. I will leave it up to you to make some opening remarks. I will then invite Committee members to ask questions or raise any points of discussion.

263. **Mr Brian Campfield (Northern Ireland Public Service Alliance)**: Thanks for the invite and for giving us the opportunity to make a few comments on the Superannuation Bill. Before I touch on the specifics of the Bill, I will make some general comments. The proposed changes to the compensation scheme and the changes to various public sector pensions are, from our perspective, all part of the UK Government's austerity agenda. I know you have received evidence in the past on this, and it has to be said that changes to the compensation scheme started with the previous Labour Administration. However, we see these changes as being part of the general austerity programme.

264. We take the view, from a trade union perspective, that public sector pensions are affordable. I know that there is a debate about that, but, for the record, we take the view that public sector pensions are affordable. We hear a lot of talk about comparison between pensions in the private sector and pensions in the public sector. We emphasise that the real divide in pensions is between those who receive very, very high pensions, primarily in the private sector, and the bulk of the rest of the workforce, who do not get a proper pension. We carried out some research on pensions last year, and every MLA got a copy of that publication. The purpose of the research was to strengthen the arguments that we are making. We do not see the attacks on public sector pensions or the compensation scheme as justified. We think that they are driven by political ideology.

265. The Bill itself is designed to replicate the GB position, where there has been, I suppose, enforced changes to the compensation arrangements for civil servants. There is a long history to this. I looked at the evidence given to the Committee on 15 June 2011 and earlier this month by the Department of Finance and Personnel (DFP), which provided some papers giving a history to this. Changes to the Superannuation Bill were basically forced upon the unions. At one stage, that did result in strike

action by the Public and Commercial Services (PCS) union across the water.

266. **I am anticipating some of the questions that you might raise. The question for us is this**: what is our attitude to the Superannuation Bill? The Bill is designed to take away the veto that the Superannuation Order (Northern Ireland) 1972 gives to the trade unions. I know that parity is an issue that is exercising the minds of Committee members. Certainly, it is an issue that is exercising our minds as well, and it presents us with somewhat of a dilemma. Generally, in the past, we have been fairly supportive of parity. We still are supportive, in many respects, of the parity approach. I will say that we do not have exact parity in the Northern Ireland Civil Service (NICS) on pay. Pay rates in the Northern Ireland Civil Service are not the same as those in the UK Civil Service. They vary. In fact, they vary from Department to Department in the UK or Home Civil Service, or whatever you want to call it. It used to be the situation, when there was national pay bargaining, that the rate of pay for every job in the Northern Ireland Civil Service was equivalent to that of its counterpart in the UK Civil Service. That has not been the case for quite a number of years. In a sense, parity has been diluted by those changes. However, it has to be said that we have generally had parity in pensions and compensation schemes.

267. If we had a direct rule Administration and this legislation were being dealt with by an Order in Council in Westminster, our members would probably have understood that we would have little or no opportunity to properly argue for their interests to be protected. We now have an Assembly and an Executive, and the question is this: what do our members expect us to do? Do we say that there should be strict application of parity, which will result in a detriment to our members, or do we say that we should depart from parity? That has its own problems in respect of us being able to ensure that our members get the best possible deal in any negotiations with government on the pay and conditions of not only civil servants but public servants.

268. It is not quite like trying to square a circle, but some people call the view that we have taken on the parity arrangement a principle while others call it a policy. By and large, the arrangement that is in place is not strict or absolute in its application. From a trade union perspective, we also take the view that, when terms and conditions are being worsened, we generally argue for no detriment. In order for us to square the circle, particularly when we are talking about people being made voluntarily or compulsorily redundant, we are saying that the Northern Ireland Assembly, with the powers that it has, and the Executive should not worsen the terms and conditions of employment in that respect.

269. We are aware that some people may think that taking that approach is a hostage to fortune in respect of something further down the road in relation to parity. We know that there are issues with the compensation scheme and issues relating to age discrimination and parity, and the trade unions in Britain were aware of those issues. The difficulty was that they did not reach a point at which there was a sufficiently good offer on the table, and a number of unions recommended acceptance of the UK Government offer because they were told that, if they did not accept it, a worse offer would be imposed.

270. In Northern Ireland, we have that power, but I do not think that our members would thank us if we were to say, "Go ahead and apply parity absolutely, even though it might be to our detriment". Our colleagues who we deal with on the management side in DFP have advised us that they do not anticipate any redundancy situations at the moment. There are no redundancy schemes for our members to avail themselves of.

271. You could argue that this is an academic change, but we know that our union members who work in non-departmental public bodies (NDPBs) that follow Civil Service

terms and conditions of employment are in a more difficult position with their budgets. Those bodies do not have the scope to redeploy people because their organisations are not large like the Northern Ireland Civil Service. Therefore, we could find that some NDPBs might have voluntary or compulsory redundancy schemes. In those circumstances, particularly in Northern Ireland, where employment is at a premium in the sense that it is not easy to find a job, we could not justify a dilution in the compensation terms for people who are made redundant.

272. I appreciate that these are difficult issues. I will let some of my colleagues make comments in a moment. Broadly speaking, we are supportive of parity. In the Civil Service, we do not have it in absolute terms, and, if there are potential redundancies, the best terms should be made available. If we were to say to the Committee that the Bill should not be passed, we would be happy to sit down and have our own negotiations in Northern Ireland with the Department in respect of a scheme that addresses the age discrimination aspects of the current scheme. On those age discrimination aspects, I will say that there is a vulnerability, but the new scheme also has a vulnerability. There is a judgement to be made on the level of risk that needs to be taken on a lot of these things.

273. We are happy to sit down with the Department. I know that there are issues of cost and various things, and I am happy to pick up on any questions on that. We are happy to sit down with the Department to see if we can come up with an alternative scheme that does not create difficulties for people who find themselves being made redundant, whether on a voluntary basis or on a compulsory basis.

274. **The Chairperson**: OK. Thank you very much.

275. **Mr Gareth Scott (Unite)**: Our position has been summed up very well. We generally agree with parity, although it is not total parity. We are not here to argue for a detriment for our members. We are talking about the compensation scheme. From what has been explained to us about what is happening, my understanding is that, under the current rules, you need the agreement of the trade unions to change that scheme; certainly to reduce it. The viewpoint that is driven by Westminster is that the legislation should be changed to remove that agreement. My understanding is that the Westminster Government are pursuing the matter to reduce the level of the compensation scheme. There may or may not be reasons for that in England and Wales — I do not know; I do not represent members in England and Wales. Certainly, however, our understanding is that there is no great cost driver in Northern Ireland for that. Our understanding from the Department is that there is not any intention to have any large-scale redundancies in the Civil Service in Northern Ireland. We take that very much at face value. We recognise the efforts that have been made by the devolved Government and the Civil Service in Northern Ireland to try to ensure that we avoid that situation. At the moment, whatever reductions there have been have happened through natural wastage. That is positive; we recognise that. We welcome the fact that that has been done by the devolved Government. If there are cost issues, we are quite happy, as Brian said, to talk about them. We have been informed that there may be some concerns about age discrimination. You do not need a change in the legislation to address that. We do not wish there to be any problems with age discrimination or any discrimination. We will happily sit down with the employer side to address any concerns in that regard after taking legal opinions.

276. I am the secretary for the non-industrial — sorry; the industrial trade unions. *[Laughter.]*

277. **Mr McLaughlin**: You are in trouble now.

278. **Mr Scott**: I am the secretary for the industrial trade unions. All civil servants deserve a fair package if they are made redundant, or even if they

volunteer for redundancy, because, at the end of the day, that is only to bring about efficiencies for the Civil Service in Northern Ireland. Remember that there are a lot of low-paid civil servants as well. I would certainly argue with anybody, regardless of what the Tory-led Government at Westminster say, about the idea that the packages are lucrative. The package that we have is not lucrative; it is a fair package for people if they lose their job. For the low-paid people whom I represent, it is certainly not a lucrative package at all. Some employers in the private sector pay the statutory minimum, and they would pay even less than that if the statutory minimum were reduced. That does mean that we should have a drive to the bottom. We have to establish a principle of good governance; absolutely, there is no doubt about that. However, good governance must also be about the way in which you treat your employees. In this instance, we make the argument for the non-detriment situation. We do not believe that there is a need for this change to the legislation. Remember that no one sat down with the trade union side to deal with any issues. Someone has concluded that there is no point in sitting down with the trade unions to discuss a change in the legislation that would take away their veto. They decided to make the change without our involvement. There is no need for that. If there are issues such as age discrimination or whatever, sit down with us and you will find that we are willing to talk about them.

279. **Mr McLaughlin**: Thanks very much for the presentation and for responding to the Committee invitation. The Department has informed us that, although the trade unions have been briefed on the proposals, there has not been a formal response. Gareth and Brian, you explained the context, which is that you supported the PCS action. That legal challenge did not succeed, and the other legislation rolled forward. We are now dealing with it. Has there been any impact on your normal response as a result of the court action?

280. **Mr Campfield**: Perhaps I should explain. I noted Grace Nesbitt's evidence to the Committee earlier this month. All the unions, both industrial and non-industrial, are involved in the Civil Service pensions forum.

281. **Mr McLaughlin**: Do you ever think of getting rid of that, by the way? I mentioned that last week. It is historical, is it not?

282. **Mr Campfield**: They are actually separate Civil Services, so that is the basis for having it.

283. We have been involved in discussions, and although we knew that it was DFP's intention to proceed, at some stage, down the road of application of strict parity on the same terms as GB, DFP had delayed taking any action because of the uncertainty arising from the court decisions. It was only fairly recently that it became clear that DFP is going to proceed. It has been the subject of considerable internal debate in the trade union movement because it is not a straightforward issue. More recently, at the pensions forum, we expressed to the management side that we were likely to take the position that there is no requirement to proceed with the legislation because, as far as we are concerned, a no-detriment approach should be taken.

284. There have not been any negotiations on what the alternative will be. Evidence was given, and it is true to say that, traditionally, particularly during periods of direct rule, the provisions that go through are taken through lock, stock and barrel and translated into orders for Northern Ireland. Given the political context in which we were in, it was, by and large, accepted that, if we did not win the argument on those things in the UK, we had also lost the argument in Northern Ireland. The existence of the Assembly potentially changes that situation because it is the Assembly's legislation.

285. It presents us with obvious dilemmas and difficulties, but we are very much of the view that the Bill, which is primarily

designed to remove the veto that the trade unions have over any detrimental changes to the compensation scheme, is not the right approach to take, certainly not at this stage. We think that proper negotiations should take place. We have not had negotiations. We have only had information-provision sessions on what the Minister was thinking and where the court cases were at in GB, and we were told that the intention was probably to proceed down that route at some stage. At that point, we were not being forced into a position in which we had to make a decision on what way we wanted the process to go. However, once it became a reality, it exercised our minds, and that meant that we had to articulate some view on the legislation. We are torn between the strict application of parity and the implementation of a parity arrangement that will be detrimental to members. As I said, we have tried to square that circle, and we are reasonably comfortable with it in the sense that, as I said, in the Northern Ireland Civil Service, we do not have strict parity on pay. Certainly, in a redundancy compensation scheme, there is scope for us to not introduce detrimental changes, at least not for a number of years anyway. I do not know whether that answers your question.

286. **Mr McLaughlin**: In a sense, but I am getting at a particular point. You said that you are generally happy with the parity arrangement, but the circumstances have now changed quite dramatically as regards the consequences of sticking strictly to parity with Westminster. I am interested in the quality of your engagement with the Executive here, and, for that matter, with the 108 MLAs. What if you were to look at that changed reality and decide that you would inform the public debate and especially the Assembly and the Executive? Have you considered drawing up a formal response? That, at least, would add quality to the debate, because, clearly, you have a very important perspective to add. If you are standing back because you did not engage up to now, the existence of the Assembly requires that you act, according to that logic.

287. **Mr Campfield**: That is where the logic takes us. We would not have any difficulty in articulating our position on the Bill. I am not sure that we would want to get into a philosophical or political debate about parity. We recognise that, from a trade union point of view, in order to be able to protect our members' interests, we need to maintain a degree of flexibility in any approach that we might take to any manifestation of or departure from parity, because circumstances will vary. We are more than content to put down on paper why we think we should not proceed with the Bill and should not change the requirement to get agreement from the trade unions in a situation where, clearly, the purpose of removing that veto or the requirement for that agreement is to make detrimental changes to compensation for workers who find themselves being made redundant.

288. **Mr McLaughlin**: Is it about engagement with the Executive, who are driving and have tabled the legislation? Sammy Wilson is representing an Executive intention to mirror what happened at Westminster in this instance. Are we going to have a didactic debate as opposed to a negotiation or an engagement? It is just so that we know how you are coming at it. Have you considered what you should do in response, and does that involve setting out a detailed presentation that we can learn from and share?

289. **Mr Campfield**: I thought you could listen as well as you could read, Mitchel. We can do that. Part of the difficulty has been that —

290. **Mr McLaughlin**: I am not hearing an answer now; maybe I am not listening. I have not heard you say yes.

291. **Mr Campfield**: Let me tell you frankly that we have been struggling with this issue. It is only fairly recently that we worked out the position that we should be adopting on these things. We will

say to DFP and the Minister what our position is on the Bill. I know that there are broader and more general principles that will, perhaps, come into play, but we want to confine our arguments to the Bill itself. We are happy to have a debate about parity and all the ramifications of departing from it, but we are looking at the matter specifically in a situation where there is a potential detriment to public sector and Civil Service employees and we are dealing with it in that context. Sometimes, we have to act like politicians as well, whether we like it or not. We have to take into account other things that might be coming down the road. We have to retain a degree of flexibility that does not tie us up or prevent us from properly defending our members' interests.

292. **Mr Billy Lynn (Northern Ireland Public Service Alliance)**: Mitchel, I am going to confuse the issue even more, because NIPSA's position could veer from parity, warts and all, to parity plus whatever else we get. It is a debate that we are having among ourselves, but, at the end of the day, we want to ensure that our members in the Civil Service are not worse off than they would have been under this new scheme.

293. **Mr D Bradley**: Good morning. One of the issues that you have with the Bill is the removal of what is called the veto. You could say that the Bill removes the veto from the trade unions and hands it to the Department of Finance and Personnel, because the Department will be able to make detrimental changes to your members' compensation schemes and present the Assembly with a fait accompli. The report on the negotiations and so forth has only to be laid before the Assembly. There is no opportunity for the Order to be annulled either by affirmative or negative means. Would you agree that, if the Bill were to go ahead, there is a need for a mechanism to be included in it that gives the Assembly some real influence over the report that comes from the Department of Finance and Personnel on the negotiations with the trade unions?

294. **Mr Campfield**: I understand the point that you are making. That is almost like a fallback position in trying to make sure that the Committee, for instance, would be assured that DFP had entered into the negotiations in good faith.The fact that the removal has taken place across the water and the objective of some in DFP to strictly apply the parity rules does not necessarily give us a great deal of confidence that, if the provision was removed, DFP would be compelled to negotiate in a more meaningful and real way. We would prefer that the Bill was not changed to remove that requirement.

295. I think your question was, if that was removed, whether there should be some provision in the Bill that allows changes to be made, rather than it being a matter of DFP laying it before the Committee. There are broader issues there; it is not something that we have given a lot of consideration to, and any changes to schemes or regulations would be a political matter. The 1972 Order deals with the Civil Service scheme. There are somewhat different provisions for the health service scheme and the teacher scheme, so the schemes vary to some extent. We were a bit surprised when it became clear that there would be no debate in the Assembly or Committee about the changes to the pension scheme regulations or rules. Although the compensation scheme is separate from the pension scheme in this case, it appears that it just requires a change to the pension scheme rules.

296. This may not be a direct answer to your question. However, if, in the context of the current Bill, real and meaningful negotiations took place between the Civil Service, the Department of Finance and Personnel and the trade unions about a replacement scheme, and we were unable to resolve that or come to a reasonable conclusion, people might say that the trade unions are being unreasonable, are not prepared to negotiate meaningfully and that they simply want to say, "What we have we hold" or whatever various phrases people in this part of the world use. I

can think of "No surrender" and other phrases, and we are quite happy to use those phrases.

297. **Mr McLaughlin**: I have used those myself on occasions.

298. **Mr Campfield**: It would be useful to have the opportunity to engage with the Department in real negotiations, particularly if their outcome influenced the way in which the Committee viewed things and the view of whether the trade unions are being unreasonable in trying to negotiate a resolution with the Department. If the provision was removed and if there was some Committee scrutiny and some Assembly influence over it, I would not be overly confident that anything other than what DFP wanted would go through.

299. It would be useful to test our and the Department's bona fides by entering into negotiations to address some of the Department's concerns. I know that the Department has issues about the costs on two counts: the compensation levels and the administration of the scheme. However, the costs would be minimal and there is an absence of any real information on them. I suggest that the trade unions and DFP should be allowed to have some negotiations to see whether we can reach agreement. If that is not the case and there is no agreement, I am sure that people will interpret who is being reasonable and who is not. It would be useful to test the commitment of the trade unions in Northern Ireland as it has not been tested before. There have been negotiations across the water, but there have not been any negotiations as such here. Those negotiations would maybe inform views about whether we should change the Bill, and, if we should change the Bill, whether there should be some other scrutiny provision for the Assembly in the matter.

300. **Mr D Bradley**: So, you are happy enough to enter into negotiations with DFP on those issues.

301. **Mr Scott**: There are a few facets to your question. First, as we said in the introduction, our position is to come here to say that we do not believe that there is a need for a change to the legislation. I suppose that remains our position. Although we keep talking about a veto, the legislation, as it is currently, still allows for the employer's side to meet the trade union side to discuss, and possibly negotiate, whatever changes they want to have. That has never happened. The viewpoint has always been this: let us not bother with that; we know what they are going to say, so let us change the legislation so that we do not have to do that. So, we would argue that the legislation stays the same and that DFP should engage with the trade unions, and we will see where that leads us.

302. I will go back to what Brian said. Obviously, if there were to be a change in the legislation and if the trade union side were involved in genuine negotiations about what shape or format a new scheme or new legislation would take them, we would like to be involved in that. Yes; Brian has just said that now, and I concur.

303. That brings me to the other point. In your question, you said that, under the current proposals, DFP would negotiate with the trade unions and then have to report back to the Assembly. I think your question should be this: should there be some overseeing power in the Assembly, or something along those lines? I want to take up one point there. The proposal is not that DFP would negotiate with the trade unions, but that it would consult with the trade unions. That is a significant difference for us, because, unfortunately, our experience, particularly in England and Wales and even in the private sector, is that the true meaning of consultations in an industrial sense means very little these days. As such, it would mean what you went on to say, which was that, in essence, we would have very little influence in that decision-making. We have stated our primary position, but, as Brian said, if there were to be a change in legislation, there should be some sort of overseeing provision or accountability

to DFP and the Assembly as a fallback position. However, I think that that would be our secondary aim rather than our primary aim. It is important to say that the proposal is not that DFP would have to negotiate with trade unions, but to consult with us. We see a significant difference through our experience in how employers engage when they have to negotiate and when they have to consult.

304. **Mr D Bradley**: The papers that we received from the Assembly's research service indicate that some commentators say that it is very expensive to make civil servants redundant and that the legislation could be a Trojan Horse, in so far as it would lessen the cost of making civil servants redundant and, therefore, could enable more civil servants to be made redundant because it would not cost the Government as much. What is your view on that?

305. **Mr Campfield**: I think that was one of the big drivers in the UK. Jim will be able to confirm that, because his organisation has been involved in the discussions. One of the big drivers was to reduce the cost of redundancy in a situation in Britain where the previous Labour Government and the current coalition Government intended to reduce significantly the numbers of civil servants. There was a big cost factor involved in that, and I think there was an ideological approach to it as well. They mentioned age discrimination, but the unions would have negotiated an agreement to cover age discrimination, providing that the terms for those people who were being made redundant would have been satisfactory. Jim might want to comment on that.

306. Of course, the more expensive it is to make people redundant, the less likely an employer is to make them redundant. That is the basic trade union principle. We have been criticised by some quarters and asked why we would negotiate a redundancy agreement when trade unions are opposed to redundancy. In the practical world, we know that a redundancy procedure with good levels of compensation is a disincentive for employers to make people redundant. I think that remains to be the case.

307. **Mr Jim Caldwell (FDA)**: The FDA was involved directly in the "negotiations" that took place with Cabinet Office and Treasury before and after the most recent general election. It was clear that the main driving force was not any threat of age discrimination, although that was an issue, but to reduce costs. That is the same as the argument in respect of pension changes, which is to reduce costs. Through the pension changes, we have seen that all it means is money going into the Treasury's coffers to offset the deficit.

308. The figures that we were given during the negotiations, which we remain unconvinced about, meant that changing the compensation scheme arrangements would save £500 million over three years. That was based on some obscure formula and calculation produced from somewhere in the bowels of the Treasury building. That was the main driver. It was not about improving or altering the scheme to produce a better impact. It was about cost savings. Ultimately, four of the six unions agreed the new proposals but that was on the basis that that was the best that could be negotiated, because, if they had not reached agreement on the improved proposals, worse legislation had been tabled in the Commons by Francis Maude, the Minister for the Cabinet Office. Really, it was a bit of a hostage to fortune.

309. One of the difficult positions that trade unions are always in is whether to recommend something that is a detriment rather than have something imposed that is even worse. So, the negotiations were not genuine negotiations because the employer's starting point never changed from beginning to end. We finished up having four of the six unions agreeing the changes, albeit we recognised that they were worse than what had been in force but were better than what was being

proposed. That is where we finished up. It was all about cost.

310. I will pick up on the 1972 Order. It seems to me that legislation that survived for 38 years without causing any problems or issues must have been reasonable legislation. Changes were proposed only latterly because the Treasury wanted things driven through with no arguments. It lasted for 38 years without any issue on the employer's side or the trade union side. It must have been decent legislation at the time and right up to 2010, when it was changed in GB.

311. **The Chairperson**: Mitchel has a brief supplementary question to ask.

312. **Mr McLaughlin**: Are you finished?

313. **Mr D Bradley**: Yes.

314. **Mr Scott**: Can I add to that?

315. **The Chairperson**: We are trying to keep it tight because of the time.

316. **Mr Scott**: Whether a package is good or not is relative. Many people at the head of industry get very big packages when they go. It seems that, when an economist comes out with that argument, they compare it with what I would see as the poorest employers in the private sector who pay the statutory minimum. We have to remember that the statutory minimum in the United Kingdom is one of the lowest in Europe. It is easier to hire and fire people in the UK than anywhere else in Europe.

317. A lot of people in a redundancy situation seem to forget that it is not about just the redundancy package. The intention in the redundancy situation is to look at the problems causing that redundancy situation and try to avoid the redundancy. That is good practice. The intention of a good employer, such as the Civil Service and the Assembly, which they have been doing and I commend them for, should be to avoid redundancies, not because redundancy packages are expensive but to try to avoid redundancies because that is the right thing to do as a good employer. To be fair, that is what the Northern Ireland Civil Service has endeavoured to do.

318. It seems to be an ideological argument. I know of no statistical information showing that there has been a problem with the levels of redundancy, and that has prevented redundancies in the Civil Service in Northern Ireland. My understanding is there have been no redundancies in the Civil Service because there has been planning and management of the situation so that cost reductions can be dealt with through natural wastage because that is the policy and principle of the Assembly and Executive.

319. **Mr D Bradley**: Is there any arrangement in the Civil Service for transferred redundancies?

320. **Mr Campfield**: The Civil Service, at the moment and for some time, has had the opportunity of redeploying people across Departments. It also has the opportunity, after consultation with the trade unions, to redeploy people from one discipline to another. In fact, at the moment, we have a surplus of planners and we are trying to redeploy them in the general service grades because of the funding in the Planning Service. So, there is that scope. I know that you are talking about the education situation, in which teachers can avail themselves of transferred redundancy. I suppose that, because the Civil Service is the one employer, it can manage it. In other words, someone can go into a particular post, and that post can be filled by somebody who might have been surplus elsewhere. In a way, the answer to your question is yes, but it does not take the same form; it is a lot easier to administer. At the moment, we have the example of planners in the Department of the Environment (DOE).

321. **Mr McLaughlin**: Gareth responded to Dominic's line of questioning about the difference between consultation and negotiation. I think that he then chickened out. The question is this: how meaningful was negotiation when the unions had a veto under the current system?

322. **Mr Campfield**: This veto has been here for a considerable —

323. **Mr McLaughlin**: I know how long it has been there.

324. **Mr Campfield**: Let me tell you that it has been there since 1972. However, changes to the compensation scheme have been negotiated in Britain. In fact, the compensation scheme used to be part of the Principal Civil Service pension scheme. That was then removed and dealt with separately, and changes have been negotiated, which would have involved detriment for some people. There were different categories of staff in the Civil Service who could avail themselves of different redundancy compensation terms. I cannot tell you quite when, but since 1972, and I think that it was through the 1980s, changes were made to the Civil Service compensation scheme, negotiated by the then Council of Civil Service Unions and the Cabinet Office or Treasury, whichever was appropriate. Those were agreed changes, despite the fact that —

325. **Mr McLaughlin**: You could probably research that for us.

326. **Mr Campfield**: I could, yes.

327. **Mr McLaughlin**: That would be helpful, because I would like to further explore the point that Gareth made about the qualitative difference between consultation and negotiation.

328. **Mr Scott**: Currently, there has been no engagement in negotiations regarding changes to the scheme. It has really just been about consulting us about changes to the Bill, which will take away the need to negotiate with us.

329. **Mr McLaughlin**: Oh, I know. They describe it as a briefing.

330. **Mr Scott**: Yes, a briefing, and that is our issue. Engage with us on that, because if there was a negotiation about the need to change the compensation scheme, which is the real end goal of changing legislation, we would expect the employer's side to sit down with us and put its arguments for the need to change it. That would be the employer's presentation. As I said, regardless of what is happening in England and Wales, where I know that there have been lots of redundancies, no one in Northern Ireland has indicated to us that, over the next years, there is a need to reduce the compensation scheme. In fact, we are being told by the employer's side that it can manage to achieve savings that are needed through natural wastage. So, I find it hard to believe that employers would be able to put a sustainable argument that there is a need, even from an economic point of view, to change the scheme. However, they have failed to negotiate with us on that.

331. **Mr McLaughlin**: You know what they have done in Westminster. You know what the Executive have tabled through the Finance Minister. So, would a formal response by you not escalate this engagement?

332. **Mr Campfield**: It could. We do not have any criticism of officials regarding the approach that we took. That would be the traditional approach that is taken in respect of these things. However, as I said, we have had to have our own internal deliberations on these issues, and they have not been easy. For a whole range of things, the issues can be hard to manage. We are now in the position of having a position. We will engage with the Finance Minister's officials and can make representations to him. We can do that formally; there is no difficulty with that. However, there was a delay and we were not going to start raising big issues if there was no impetus on the employer's side to make the changes. For a long time, we let the hare sit, because, for a time, the current rules would have applied in the event of redundancies. We did not want to intervene in a way that would have triggered a change to that, but now that the Bill has triggered that change, we have been forced — if I may use that term — into taking a more coherent and consistent position on the issue.

333. **The Chairperson**: I think that Paul wanted to explore the consultation issue

further, although I am not sure that there is much left in it.

334. **Mr P Maskey**: There is probably not much left that others have not explored for me. Are there any other examples of comparable negotiations or consultations between the Civil Service here and you that had a good outcome for the trade unions?

335. **Mr Campfield**: I do not want to pre-empt anything, but we are involved in negotiations on the pay and grading review, and Derek Baker was up here not that long ago to talk to you about that review. We will not say anything more at this point in time. We hope that many of the problems that face the Civil Service, ourselves and our members will be resolved as a result of the outcome of the pay and grading review. It is subject to negotiation, but that is what we do day and daily.

336. Over the years, we have negotiated outcomes in a range of things. We have had to disagree with some things, and they have been implemented without our agreement, especially where there has been a GB Treasury-imposed pay limit and the hands of negotiators have been tied because of the pay remit that exists for the Civil Service. We are heavily involved with DFP officials on the pay and grading review, and we hope that, within the not-too-distant future, some product will come out of that. It is not much good if it is not of benefit to our members, but I also think that it will resolve a range of concerns that the management side has identified.

337. **Mr Lynn**: One example from 2009 was, as you will be aware, the outcome of the equal pay negotiations.

338. **Mr P Maskey**: I take Gareth's point that there is a vast difference between consultation and negotiations. It will be good to look at that further.

339. **Mr Cree**: Good morning, gentlemen. The Bill, as you know, basically has two clauses, and we have discussed the one on consent. However, on the question of the compensation scheme, you gentlemen represent the lion's share of the trade unions. Can you provide the Committee with a general perspective of how civil servants will be impacted by the change in compensation arrangements, taking into account that this applies to different grades and different staff levels? Could you give us some idea of how that will work out?

340. **Mr Campfield**: We have not done a separate analysis. In his letter of 27 June, Norman Irwin provided you with the details of the types of changes that were being made and a breakdown of the current terms, the proposed terms and the terms that apply in GB. Some examples are given in there, and we can work up examples of specific detriment to, for example, somebody who has worked for 30 years in a certain grade and at a certain age and do a comparison of what they get under the current scheme and how much less they would get under the new scheme. That has been done. I do not have the figures here, but we can provide information along those lines.

341. **Mr Cree**: In that area, is there a big difference between the lower-paid grades and the higher-paid grades?

342. **Mr Campfield**: There are differences in the impact, but I am unable to explain exactly what they are at the moment. If we were involved in detailed negotiations with DFP, it may well be the case that that issue could be factored into those negotiations on both sides to reach a reasonable outcome. Because the compensation terms are related to salary and service, the higher paid you are, generally, the more compensation you will get. There are limits on that. That is a legitimate issue to consider to get a proper balance in the compensation scheme to take account of lower-paid people as well as higher-paid people and to get the right balance for the needs of those categories of individual.

343. **Mr Cree**: I cannot resist the temptation to go back to Gareth. He said that no redundancies are scheduled anywhere on the horizon. Are you concerned for the medium to long term?

344. **Mr Scott**: Let us be clear about this: on the industrial side — I can only talk for that side — there has been a reduction in the number of posts, which, up to this point, has been achieved through natural wastage. The viewpoint that we are getting is that that will continue and that there may be reduction in posts through natural wastage.

345. At some point, there may be the possibility of voluntary redundancies, but we are certainly being informed by the employer side that it does not envisage any plans for forced redundancies at this stage. We welcome that. However, I have to put that into context. We do not welcome the fact that there is a reduction in jobs; I make that very clear for the record. We are opposed to the cuts that have been imposed by the Westminster Government. However, if they are going to be forced on us, we take the view that we should try to avoid forced redundancies wherever possible, and that is right and proper for an employer.

346. **Mr Cree**: Of course, but you welcome the redeployment. Obviously, that policy is very important.

347. **Mr Scott**: Yes. If we were in a debate about why the compensation scheme needs to be cut, something that we would point out is that one advantage the Civil Service has is that it is a very large employer. For example, if we had something like that on the industrial side, we would try to find alternative work within the department or agency. You can then do a job search throughout the wider Civil Service, so that gives us the scope to avoid redundancies. I come back to the argument that, based on everything that we have been told, we do not see that there is even an economic or financial argument to cut the compensation scheme.

348. **Mr Campfield**: One of the issues is that redundancies are not on the horizon immediately in the Civil Service. We have just come through the second year of the UK Government's austerity programme. There is a view that the cutbacks have been backloaded and we have not seen the worst of things. There is worse to come. It is not just going to be for the life of this Parliament, because the UK Government have said that it will continue until 2017. Therefore, there are real prospects of redundancies in the Civil Service. They might not be there at the moment, and they are not planning for them at this stage, but it certainly cannot be ruled out. It is a question of watching this space. However, because of the way in which the austerity programme is progressing without any change, alternative or plan B, we will find ourselves in a situation where, I suspect, there could well be a redundancy situation. For example, we could be in that situation with specific groups of staff who are difficult to redeploy. At the moment, we are trying to facilitate and ensure the redeployment of planners who are prepared to go into general service grades and work at something other than what their professional training qualifies them to do. However, at the end of the day, from a trade union point of view, we are not expressing optimism when we say that there are no redundancies on the horizon immediately; it is a relief to some extent, but we know that things could, potentially, get worse and we could be in a compulsory and a voluntary redundancy situation.

349. **Mr McQuillan**: I find it a bit strange that the unions have not done any homework on the pay grades, what the current scheme is getting and what you would get in the new scheme. I would have thought that you would have had that all done before rejecting the Bill or coming to talk about it.

350. **Mr Campfield**: We know what the differences are. We can go and dig it out. We just did not prepare it for today's discussions. We know how much worse off people will be. A lot of work has been done across the water in respect of that, and that can be laid out, and is laid out.

351. **Mr McQuillan**: We are taking the Department's word for it here. I would like to hear what the unions are saying about it as well.

352. **Mr Caldwell**: The point is that we can give examples and general overall costs as to our view of the detriment, but, at the end of the day, the way that the scheme is applied will be different for each member of staff, because the current scheme, and, to some extent, the new scheme is based on length of service, how much you earn, etc. We can give examples, and Brian said that we are happy to do that.

353. **I want to pick up briefly on two points.**

354. **The Chairperson**: We are really up against time now.

355. **Mr Caldwell**: Brian was right about the long-term financial position. I am sure that you all listened intently to the Chancellor's autumn statement when he talked about an additional £30 billion being taken out of the public sector in 2016-17, and he confirmed that in his statement last week. Therefore, things are going to go on for some time. The other thing is that, if the Assembly agrees the new scheme, it does not resolve all the ills. We are constantly coming across issues that are being thrown up by the new scheme since it was introduced in 2010 and having to deal with those and the implications of what has happened because of the application of the new scheme.It is not all sweetness and light under the new scheme, if that is the route that you choose to go down. Another reason why we are suggesting that it would be sensible to have some discussions and negotiations is that those problems could be pointed out and dealt with. We could retain the old scheme, as would be our preference, or, if we get into a parity situation, we could at least say, "Here are issues in the new scheme that you need to address before you introduce it."

356. **Mr Girvan**: Not today but previously, Brian alluded to the reductions in staff in the Civil Service and the public sector in Northern Ireland that would result from the austerity measures put in place by the British Government. He said that 4,000-plus jobs would disappear from the public sector. In light of that, how would you calculate the implementation costs under the current system? How much more would it cost us to make redundancies on that basis? I am just using your own words; you said that 4,000-plus jobs would disappear.

357. **Mr Campfield**: It would have been nice to be notified that you were going to quote my words from some other occasion.

358. **The Chairperson**: If you have not got a response to that now, can we come back to it in a written response? It requires a calculation that you, like me, could not do in your head right now.

359. **Mr Hussey**: That was a very sneaky question.

360. **Let me declare an interest**: I am still a member of Unite, I believe, but after today I could be expelled. *[Laughter.]* In exploring the consequences of what is proposed in the Bill, a House of Commons Committee considered the relative terms and conditions that apply in the public sector versus the private sector. What is the view of the unions on the relative differences and how they underpin the arguments around the Bill?

361. **Mr Campfield**: This issue has arisen over the previous number of years. Myths are peddled about how well off the public sector is in comparison with the private sector. We mentioned to you that we have tried to debunk that argument in relation to pensions by exposing the pensions of directors at the top of industry and finance. The real division between the public and private sectors is not between the vast majority of workers in those sectors; it is between those at the very top and the rest of us. We made the point that the private sector — this is not a criticism of the private sector as a part of the economy — generally can pay its top people pretty handsomely, whereas it tends not to pay the people at the bottom quite so well. That applies to pension provision as well. Over the past five, six and seven years, a large number of big corporations have withdrawn from their final salary occupational pension schemes, yet, at the moment, their

bank accounts are filled with money as they cannot find anywhere to invest it because of the general economic climate. The coffers of a lot of large corporations are overflowing because they do not see sufficient investment opportunities to invest their money and make a profit. That is one of the reasons why we have not got out of the recession.

362. Of course there are differences between the public and private sectors and, generally speaking, yes, public sector workers have better pensions than private sector workers. However, the real issue is this: because private sector employers have jumped ship and pulled out of decent pension schemes, why should the Government or the Assembly and the Executive follow that race to the bottom and say, "Well, the private sector has done it, so we are going to do it. It is not fair that the pensions of private sector employees are not as good as ours, so we are going to dump or dilute the pension scheme for public servants."

363. We have always made the argument that, in Northern Ireland, thousands of families have family members who work in the public sector as well as family members who work in the private sector. The private sector has taken a hit in pensions and pay. We all know people in that position; friends of mine are in that position. It does not do the family or the community any good to say to a husband working in the public sector, "Your wife has lost her job in the private sector and has taken a hit on her pension or pay, so you must take a hit as well because we have to treat both sectors the same. Therefore, we are going to freeze your pay, reduce it or make you pay more for your pension." What that does for that family and those communities is make everybody worse off. We see that distinction as being artificial.

364. **Mr Hussey**: My own background is in financial services, so I understand where you are coming from in relation to the pension schemes and the ifs, buts and maybes. However, to play devil's advocate, if ordinary people who are not civil servants find that their pensions are going to be restricted because of changes in the private sector — because of the fact that final salary schemes will be unheard of in the next 10 or 20 years — why should civil servants be exempted from that?

365. **Mr Campfield**: I thought that I gave you an answer to that. The solution is that the private sector should treat its staff better. It should not be involved in a race to the bottom. Unfortunately, for private sector companies, the bottom line is their priority. It is about shareholder value and profit. That is what the private sector is about. Therefore, although it is not exclusively the case, those companies tend not to treat their people at the bottom and middle grades as well as they treat people at the top. The answer to the question is that it is a race to the bottom. If we follow everything that the private sector does, including employing hordes of accountants to ensure that as little tax as possible is paid, where would that take us?

366. **Mr Hussey**: I agree with what you are saying. There is no doubt that we are wavering on the brink of a pensions crisis, but, as we go further down the line, it is going to be a hell of a lot worse.

367. **Mr Caldwell**: It is important to recognise that there have been changes in public sector pensions. There were changes in 2007, when virtually all of the public sector unions negotiated changes that led, certainly in the Civil Service, to the introduction of a career average scheme as opposed to a final salary scheme. Indeed, all the unions were out on industrial action over the pensions issue on 30 November, and most of the unions, certainly in GB, are now consulting their members about the outcome of negotiations on the individual schemes. In the Civil Service scheme, there will be a new career average scheme from 2015. The unions have always been prepared to sit down and negotiate those matters and negotiate change, and that is what we have done. That change will mean

that there is less cost to the public purse over a period of time. As anyone who has dealt with pensions will know, you look at pensions over 25, 30 or 40 years. We believe that the cost is already reducing, but we certainly believe that it will reduce even further from 2015 and beyond. So, there have been changes in the public sector pension scheme arrangements, and in the Civil Service arrangements in particular.

368. **Mr Hussey**: The fact that people are working longer also reduces the overall bill. The standard retirement at age 65 is gone and people will work longer. I do accept that.

369. **Mr Scott**: We also have funded and non-funded schemes within the public sector, so we are not always comparing apples with apples when we make comparisons with certain things in the private sector. Funded schemes in the public sector have much bigger pots to invest, and long-term investments are much more affordable. We believe in the research. People are telling us that, in the longer term, the amount will reduce, even without changes. To come back to an earlier point, changes were brought about by negotiations in 2007, so it is not the case that trade unions have tried to oppose changes to pension schemes. To get back to this particular issue, which is more about the compensation scheme, I do not necessarily agree with some points. The terms are all relative. I look at company accounts all the time, not because I necessarily understand them but because I have to do pay negotiations. I can assure you that, if you compare the pension provision for directors in many private companies with schemes in the Civil Service, you will find that the Civil Service schemes are not that good.

370. **Mr Hussey**: If you compared most schemes with those for directors —

371. **Mr Scott**: Yes, exactly, but that is never mentioned by the Confederation of British Industry (CBI) when it is comparing the public sector with the private sector. I know that most directors do not pay a penny into their schemes; the contribution is paid totally by the employers. We could get into all of those debates about relative arguments.

372. **Mr Lynn**: The problem is not the generosity or otherwise of public sector pension schemes; it is that the private sector abdicated the responsibility to pay its workforce semi-decent pensions.

373. **Mr Scott**: That aspect is important. We are not saying that all employers in the private sector are bad employers. That would be a ludicrous statement to make. Just as employers say that there are good employees and bad employees, there are good employers and bad employers. That is life. Some employers in the private sector, such as DuPont and Invista, with which I deal, pay good redundancy packages. You get small companies that pay only the statutory minimum because that is all they can afford to pay. However, you also get a number of employers that can afford to pay more but just pay what they can get away with. The statutory provisions in the UK are the lowest in the European Union. I genuinely believe that it is about the fairness of the package that goes to the person. I do not like to take the human element out of all these things. We can always compare who is cheaper and drive to the bottom. However, I think that we should set an example by saying, "Here is what we can afford, and here is what we believe we should be paying our people regardless of what anybody else says."

374. **The Chairperson**: I am conscious that we are up against it. David, you have not had an opportunity to ask a question yet. Do you want to ask one?

375. **Mr Hilditch**: We have covered the issue of parity fairly well. You indicated the variation in pay rates and that there is not absolute parity in the Civil Service. You also said that you would not take a position that would be detrimental or disadvantageous to your membership. Are there other examples where the Department has departed from parity with regard to terms and conditions?

If so, could they be used to show how a departure from parity could be managed?

376. **Mr Campfield**: Nothing immediately comes to mind.

377. **Mr Caldwell**: It departed from parity in respect of Senior Civil Service pay, which impacted on my members. It moved away from that at least a couple of years ago.

378. **Mr Campfield**: That was in respect of the bonus.

379. **Mr Caldwell**: Yes, that is right. To be honest, we were quite content with that because it was a sensible move. It put what would have been bonus payments into the overall pay pot to lift the bottom of the salary ranges. So, it was a sensible move. It was just unfortunate that the Finance Minister announced it on radio before he told us. That aside, it was a sensible move. That is an example of where the Department moved away from parity.

380. **Mr Campfield**: There are other terms and conditions. For instance, we still have the Civil Service Appeal Board here. It is a very useful mechanism for making sure that civil servants who are dismissed do not end up at a tribunal, which costs the Department a fortune. They have an opportunity to have the matter heard by the Civil Service Appeal Board, which is a very fair approach. That has been done away with in Britain; there is no appeal board there anymore. There are differences and a number of variations. That is one example, and the removal of the bonus scheme for the Senior Civil Service is, of course, another one, as Jim says.

381. **The Chairperson**: OK. Thank you very much for that. There were a couple of other issues, but given that we are very much up against it in respect of time and have a few other bits and pieces to do, we will correspond with you and get some answers.

382. There was quite a lengthy discussion on the issue of consultation versus negotiation. Obviously, one of the main clauses is around that. We have asked our research people, who will supply us with information for our deliberations, for some research on that issue and on the legal definition of consultation versus negotiation, because such a definition has been set down. We as a Committee can also write to the Finance Minister and ask him to enter into negotiations with you, now that you have agreed a position among yourselves.

383. We are now at the Committee Stage of the Bill, which lasts for a certain period, but we can ask for an extension. I think that we have to ask for an extension by 21 May. There seems to be good cause for us to ask for an extension. If we did so, it would create a window of opportunity, if you like, for you to open up some dialogue with the Department. As part of our deliberations, it would be helpful to get feedback at some stage from you and perhaps the Department on where those negotiations have led. We will then go through the Bill line by line. So, it would be helpful if we knew whether there was agreement on certain issues and whether the Department intends to make changes to the Bill as a consequence of that. We are trying to get the maximum amount of information and take the best approach we possibly can.

384. **Mr Scott**: I could save you a lot of money on the legal bill. My experience of consultation is that they ask you what you think and then carry on regardless.

385. **Mr McLaughlin**: You must have gone to the same one as I did. [Laughter.]

386. **Mr Campfield**: It was not always the case.

387. **Mr Scott**: No, it was not always the case.

388. **The Chairperson**: Earlier, when we were talking to the researcher, we made the point that there is a legal definition, and the consultation has to have some possibility of achieving a difference. If people are following strictly what has happened in Britain and are just importing it here, there is no prospect of change as a result of the consultation. These are issues that we want to

explore, so that we are very clear, when we are getting assurances from the Finance Minister, that there is going to be meaningful dialogue, with an attempt to reach an agreement. We want to be sure exactly what that means.

389. Hopefully, if we can get agreement, we will encourage the Department to begin negotiations with you in order to talk through all these issues. We will be keen to get some feedback. We are going through Committee Stage now, and we could well extend it, but we would have to signal that by 21 May. There is a time frame in relation to dialogue between you and the Department and any feedback on that.

390. Thank you very much. I know that our discussion has been condensed, and there were quite a few issues, but it has been very helpful to the Committee.

9 May 2012

Members present for all or part of the proceedings:

Mr Conor Murphy (Chairperson)
Mr Dominic Bradley (Deputy Chairperson)
Mr Roy Beggs
Mr Leslie Cree
Mr David Hilditch
Mr William Humphrey
Mr Mitchel McLaughlin
Mr Adrian McQuillan

Witnesses:

Mr Alan Perry — *Equality Commission for Northern Ireland*
Ms Eileen Lavery
Mrs Roisin Mallon

391. **The Chairperson**: I welcome Eileen Lavery, who is head of advice and compliance at the Equality Commission, and Roisin Mallon, who is a policy manager. I invite you to make some opening remarks, and then we will open the meeting up to discussion and questions.

392. **Ms Eileen Lavery (Equality Commission for Northern Ireland)**: Thank you for the opportunity to address the Committee. You asked us for some commentary on the Superannuation Bill. The objective of the Bill is to remove the existing requirement to secure the consent of trade unions before introducing changes to the compensation scheme and to place instead a new duty to report to the Assembly on attempts to reach agreement.

393. As such, the Bill does not fall directly under the remit of anti-discrimination legislation. Requirement for trade union consent is not a matter within equality legislation or anti-discrimination legislation, but it would be remiss of us if we talked to you without recognising that the objective of removing the requirement for trade union consent is that changes can then be made to the compensation scheme; that is, the scheme paid to civil servants and others who also use that compensation scheme on redundancy.

394. I wish to get across to the Committee that there are two aspects to equality legislation that should be considered when changes are being made to the compensation scheme. First, the anti-discrimination legislation outlaws discrimination on grounds of sex, age and so on. Therefore, you have to think about the responsibilities under those laws when making changes. For instance, will the proposed changes in any way directly or indirectly discriminate against those who are covered by the anti-discrimination perspective?

395. Secondly, the responsibilities of the Northern Ireland Civil Service (NICS) under section 75 of the Northern Ireland Act 1998 are the equality and good relations responsibilities. Again, there will be issues around that.

396. The Superannuation Bill has been given the first stage of consideration under section 75, in that it has been what we loosely describe as "screened". The view of the Department of Finance and Personnel (DFP) is that it does not need to be considered for full equality impact assessment. However, that decision may be quite different when we come to changes to the compensation scheme. The Committee needs to pay attention to anti-discrimination legislation and section 75 issues.

397. If it would be helpful to the Committee to provide you with some comments on potential changes to the compensation scheme, we would be very happy to do that today. However, perhaps at this stage, the Committee would simply like to ask us some questions.

398. **The Chairperson**: Thank you. You said that when similar legislation went through Westminster, it did not require a full equality impact assessment, and you also said that that is DFP's view.

Given that the compensation scheme will more likely affect part-time workers, who are more than likely to be women, do you think that it requires a full equality impact assessment?

399. **Ms Lavery**: On changes to the compensation scheme, as opposed to changes to the superannuation, which is only the trade union link, we are very conscious of the fact that work was done when the equivalent Bill was going through Westminster, and there was a full consultation. Subsequent to that consultation, there was what was described as an equality impact assessment, but, in fact, even that was criticised in the political process by Theresa May as not being sufficient, although changes were made. Therefore, following the consultation, Westminster looked in particular at the issue of part-time workers and at the issues of age and length of service, and how those two matters were related, and some changes were brought about. Therefore, when it comes to compensation changes in Northern Ireland, there is a real requirement to pay particular attention to those sorts of matters.

400. **The Chairperson**: In your view, the necessity for full equality impact assessment is when you get down to dealing with the effects of the legislation rather than when dealing with the legislation itself.

401. **Ms Lavery**: That is right. The Superannuation Bill and the requirement for trade union consent is not directly covered by equality legislation. However, changes to the compensation scheme are quite different.

402. **The Chairperson**: You said that there was a full consultation on the Bill in Britain. Was there a full consultation on the Bill here?

403. **Ms Lavery**: I do not think there has been a full consultation on the Superannuation Bill.

404. **Mrs Roisin Mallon (Equality Commission for Northern Ireland)**: No, as far as we are aware, the only equality assessment has been the screening document that the Department released. The Department screened it out and indicated that it did not consider there to be a major impact on equality of opportunity. Therefore, a full equality impact assessment was not done on the Superannuation Bill. As Eileen said, the Cabinet Office carried out a full consultation on the Civil Service compensation scheme. It was part of the Fairness for All consultation, in which equality was considered as part of that. The Cabinet Office subsequently did what it called an equality impact assessment, but it was quite limited. It was not a full equality impact assessment. It was a bit like the screening that was done by the Department here. However, it was criticised for being limited. Therefore, it is important that the Department liaise with the Cabinet Office to ensure that it did a further equality impact assessment and to determine whether, as a result of criticisms, it did more to ensure that equality was taken into account.

405. **The Chairperson**: So that I can be clear about your perspective, are you satisfied with the screening exercise? Do you expect that, on the implementation of the legislation, full equality impact assessments will kick in?

406. **Mrs Mallon**: Yes.

407. **The Chairperson**: OK. Thank you. Does anyone wish to ask any questions?

408. **Mr Cree**: In your briefing paper, you refer to article 11 of the UN International Covenant on Economic, Social and Cultural Rights (ICESCR): the right to an adequate standard of living. Surely Her Majesty's Revenue and Customs (HMRC) attacks that very principle all the time?

409. **Ms Lavery**: I am sorry. Are you referring to our comments?

410. **Mr Cree**: Yes. In the paper that we received from you, it states.

"The right to an adequate standard of living."

411. **Mrs Mallon**: Is that perhaps from the briefing paper from the Human Rights

Commission (HRC)? It is not from our comments.

412. **Mr Cree**: You are not guilty of this one, then?

413. **Mrs Mallon**: No. The HRC is coming next.

414. **Mr Cree**: Sorry, I thought that those were your comments.

415. **Mr McLaughlin**: Were any other representations made to you from representatives of the staff side?

416. **Ms Lavery**: No. We have not had representations from trade unions. I am conscious of the evidence that trades unions have given to the Committee. We have read it, but the trades unions have not come directly to us.

417. **Mr McLaughlin**: OK. Is it not your function to elicit those perspectives to help you come to your view?

418. **Ms Lavery**: No. I do not think that it is.

419. **Mr McLaughlin**: OK. Therefore, the position is that the Department has decided that a screening was sufficient in these circumstances. Your position is that you will watch the operational impact of the legislation and, although they have been quite vocal on this, the trades unions have not made representations to you.

420. **Ms Lavery**: That is correct. As I said, the requirement for trade union agreement to bring about changes is what we are talking about here today. That is something that the Department has considered and decided that it does not need to do a full equality impact assessment for. I think that when we come to making actual changes to the redundancy and compensation schemes, the same decision will be very different and a lot of consideration should be given to it.

421. **The Chairperson**: It is the case that changes to the compensation scheme are not subject to Assembly control. In your view, is there a concern that DFP may decide also at that stage that it does not require a full equality impact assessment?

422. You said at the start that you were prepared to speak about the changes to the compensation scheme. Perhaps you will offer us some thoughts on that?

423. **Ms Lavery**: You would like us to talk about changes to the compensation scheme? There are a number of things that we need to consider. First, who is covered by the compensation scheme? Although the focus has tended to be on civil servants, there are many others in Northern Ireland who work for public bodies who are also within that compensation scheme.

424. The objective of the change is, of course, to reduce the impact on the public purse, and we therefore recognise that payment to staff leaving on redundancy will most likely reduce. We also recognise that there will be distinctions within the very terms and definitions of the scheme as to how that impacts on different groups of staff. I think that it is a responsibility of the Department to consider fully those issues.

425. The statutory scheme for redundancy has what we call a differential based on age and length of service. The courts have ruled that, where a scheme reflects that statutory scheme, they are happy to support it, but it must reflect the actual statutory scheme. Therefore, careful consideration will have to be given to the proposals to show that they reflect that.

426. Another issue of concern is the question of whether there is a greater impact on those who work part-time or who have broken service — who are perhaps women, rather than men — and all of those are matters that require careful consideration. I am not prepared to sit at this table today and say that it is sufficient for those changes to come about without those matters being considered.

427. **The Chairperson**: However, as the Assembly may not have a role in that, who should give it such careful consideration? Do we rely on DFP to give it careful consideration? It assures us that it has taken all those factors into account and is doing the right

thing. Where do you think such careful consideration and scrutiny will come from?

428. **Ms Lavery**: As I said, the Cabinet Office in Great Britain did a consultation, took responses, made amendments and did further work. That is the kind of pattern that should be happening in Northern Ireland.

429. **The Chairperson**: You expect DFP to follow the same pattern?

430. **Ms Lavery**: Yes, we do.

431. **The Chairperson**: No one else has any questions. Thank you very much. That was helpful.

9 May 2012

Members present for all or part of the proceedings:

Mr Conor Murphy (Chairperson)
Mr Dominic Bradley (Deputy Chairperson)
Mr Roy Beggs
Mr Leslie Cree
Mr Paul Girvan
Mr David Hilditch
Mr William Humphrey
Mr Paul Maskey
Mr Mitchel McLaughlin
Mr Adrian McQuillan

Witnesses:

Dr Nazia Latif — *Northern Ireland Human*
Dr David Russell — *Rights Commission*

432. **The Chairperson**: I welcome Dr David Russell, the deputy director of the Human Rights Commission (HRC), and Dr Nazia Latif, a policy worker for the Human Rights Commission. We have your paper before us. I invite you to make some opening remarks, and I will then allow Committee members to raise some issues and ask questions.

433. **Dr David Russell (Northern Ireland Human Rights Commission)**: Thank you, Mr Chairman and Committee members. As you know, under the Northern Ireland Act 1998, the commission is charged with advising the Assembly on whether Bills are compliant with human rights obligations. In accordance with that function, we welcome the opportunity to give evidence to the Committee. In our evidence, we will draw the Committee's attention to the relevant human rights obligations that have been ratified by the UK Government and will take the opportunity to remind the Committee that those obligations lie with the Westminster Parliament and the devolved Administrations.

434. The commission is aware that the Superannuation Bill, in large measure, replicates similar provisions that are provided for elsewhere in the UK by the Superannuation Act 2010. However, we want to draw the Committee's attention to four particular issues in the Bill that require consideration from a human rights perspective. Those are the issue of parity with the Superannuation Act 2010 as applied elsewhere in the UK; the proposed removal of the existing requirement on government to seek trade union consent to any changes in the compensation scheme, and the replacement of that with a duty to consult; the concern that the changes to the current compensation scheme may be introduced in line with changes made for Civil Service staff elsewhere in the UK, and that that would be to the detriment of Northern Ireland Civil Service staff; and the proposed duty under clause 2 of the Bill to lay a report before the Assembly on consultation with the trade unions.

435. I will begin with the issue of parity. The commission is aware of the dichotomy that parity presents to Civil Service pay and compensation arrangements. On the one hand, parity has been largely beneficial to civil servants in Northern Ireland in the past, whereas the current proposal will be of detriment. The disempowering of trade unions and the changes that will follow as a result of the legislation represent a step back for trade union rights and those of their members. On the other hand, not to maintain parity on the issue could result in better arrangements for Northern Ireland civil servants but may have detrimental consequences in financial terms for the Executive. Given the current economic climate, the potential financial costs cannot be taken lightly, and Dr Latif will address some of those. From the commission's perspective, the single issue of concern is the proposed changes and how they will impact on human rights protections in this jurisdiction. In that regard, the commission is of the view that, as a consequence of the proposals, less

protection will be afforded under a range of treaty obligations. I will pass over to Nazia to talk about the detail.

436. **Dr Nazia Latif (Northern Ireland Human Rights Commission)**: I will first deal with the proposal to remove the duty on government to seek trade union consent. The international human rights treaty monitoring system is cognisant of the economic climate within which states must meet their human rights commitments, and the concluding observations and recommendations of the treaty monitoring bodies evidence an awareness of the difficult decisions faced by Governments today. However, although we acknowledge the financial pressures, our briefing draws the Committee's attention to the relevant human rights obligations and the jurisprudence of the monitoring bodies. As Dr Russell said, those obligations must be met by the Northern Ireland Executive and the Westminster Government in their legislation, policy and practice.

437. As you will see in the paper, under the International Covenant on Economic, Social and Cultural Rights (ICESCR), everyone has the right to form and join trade unions for the promotion and protection of their economic and social interests. Trade unions also have the right to function freely and to strike. The UK is also party to a number of international labour organisation conventions that enshrine the right to collective bargaining. Furthermore, the European Social Charter enshrines the rights to collective bargaining, to organise and to strike.

438. All those treaties and commentary from the monitoring bodies promote the importance of co-ordinated collective bargaining for good labour relations and the prevention of costly labour disputes.

439. The commission's concern is that the change from a duty to seek trade union consent to a duty only to consult with trade unions may risk being a retrogressive step in human rights protection for trade union members. Although it was stated that treaty monitoring bodies take into account the economic climate, any regressive measures must be justified in the strongest terms by national Governments.

440. The Bill is based on an assumption that trade unions would never consent to schemes that would be financially detrimental to their members, but that is not always the case. Social dialogue with relevant partners, such as trade unions, can lead to viable alternatives that serve the interests of employer and employee.

441. A bit like human rights law in public authorities, the relationship between trade unions and employers is often seen as inherently adversarial, but that does not always have to be the case. International research cited by the International Labour Organization (ILO) suggests that in times of economic crisis, trade unions are a vital social partner in weathering the crisis and that co-ordinated collective bargaining arrangements are more likely to lead to less inequality as well as lower and less persistent unemployment, and fewer and shorter strikes, than countries that have weak collective bargaining arrangements. The Republic of Korea is one such example. In the round, the commission asks whether the views of trade unions should not be given more weight rather than less and whether this is not the time to work with them rather than implement measures that alienate and possibly antagonise. That is just a question that we put to the Committee based on the international research that I mentioned.

442. The scheme needs to be taken in the round of the current economic situation. Although there may be no large-scale redundancies planned for the Civil Service, non-departmental public bodies (NDPBs) are facing substantial cuts, which may impact on employment. Therefore, for employees of those bodies, the possibility of increased redundancies is real, and that is matched with fewer job opportunities and far-reaching changes being planned to welfare. In human rights terms, the

totality of government proposals cannot be detached from the current one, and here the right to an adequate standard of living is engaged. In particular, the possible impact of the Bill on low-paid employees needs to be considered as does, again, whether the Bill may represent a retrogressive measure under the obligation to provide an adequate standard of living.

443. You may be aware of the case that was taken under the Human Rights Act 1998 by the Public and Commercial Services Union (PCS). The gist of the case was that rights to redundancy pay and the compensation scheme amounted to possessions, and, therefore, the changes to the scheme were an interference with those possessions. The union's claims were dismissed under protocol 1 of the European Convention on Human Rights (ECHR). However, Mr Justice McCombe in his ruling did not say that compensation did not amount to possessions nor that changes to the scheme did not amount to interference. That test that was applied in that case, and that must be applied in all human rights cases, is whether the interference be justified and whether it is in accordance with the law. Is it in pursuit of a legitimate aim and has a fair balance been struck between the persons affected and the community as a whole?

444. That is the test that needs to be applied in human rights-proofing this legislation. We would say that the answers may not be the same for the devolved Administration here as they were for the Whitehall Department. For example, a legitimate aim in that case was reduction of the national deficit. At this point, however, thankfully no large-scale redundancies are planned in the Northern Ireland Civil Service. Therefore, it cannot be assumed that the same argument applies here. Another question that needs to be asked is whether a fair balance has been met between the interests of those NDPB employees possibly facing redundancy and the interests of the community as a whole.

445. Therefore, the savings to the public purse, and the socio-economic situation facing the people of Northern Ireland, are very different from those in Great Britain. The legislator here, therefore, must be satisfied that this is a proportionate and legitimate response to the problem that the Bill is attempting to address. It is noteworthy that the Joint Committee on Human Rights (JCHR) in its consideration of the Bill found that it was an undue interference of people's possessions.

446. The Assembly needs to ensure a robust role for itself as a protector of human rights. Should the legislation reach statute as it is, the Assembly ought to ensure a robust role for itself in considering the report that has to be laid before it. The international treaty and monitoring system, although live to the current economic situation, still needs to be assured that the tests of legitimacy, reasonableness and proportionality have been met in any changes to the existing legislative arrangements and the compensation scheme that follows from it.

447. **The Chairperson**: So that I can be clear, are you suggesting that the legislation may be challengeable in court? Do you mean that the Bill itself is challengeable, the removal of the consent process from the unions or the outworkings of the compensation scheme for recipients or people who would otherwise have benefited?

448. **Dr Latif**: The outworkings and the terms of the compensation scheme was the subject of the case that was taken in Great Britain by the PCS. The point that the commission makes is that that case could still be taken. The test that would be applied would have to be satisfied in the context of Northern Ireland. To say that the case was dismissed in the context of the UK Civil Service does not automatically guarantee that there would be the same outcome in Northern Ireland, given that the legitimate aim and proportionality tests might arrive at different conclusions.

449. The Chairperson: Was any case taken on the removal of consent from the unions?

450. **Dr Latif**: No. Part of that case was that the removal of consent was an interference with the right to freedom of expression. That was dismissed by the courts in Great Britain. The international standards, such as the International Covenant on Economic, Social and Cultural Rights, are not enforceable in our domestic courts. However, it is still a legal obligation on the UK and the devolved Administrations, and the Geneva-based treaty monitoring bodies very much see it as such.

451. **The Chairperson**: Were you consulted on the process?

452. **Dr Latif**: Not that we are aware of.

453. **The Chairperson**: Leslie, you have a question that you asked in the previous evidence session.

454. **Mr Cree**: I will try it again. Dr Latif, you said that the deficit problem that applied at Westminster does not apply here? Have I picked you up correctly?

455. **Dr Latif**: In the case of making changes to the compensation scheme, the legitimate aim that was put forward by the Whitehall Department was that the changes were needed to reduce the national deficit. What I am asking is that, although no large-scale redundancies are planned in our Civil Service, what are the anticipated savings to the national deficit? Those arguments will have to be put forward separately in Northern Ireland, and the answers will be different to those given in a GB context.

456. **Mr Cree**: Do you not agree that it is the same national deficit?

457. **Dr Latif**: It is the same national deficit, but is this legislative change going to address that problem? That is the question that would be asked.

458. **Mr Cree**: I think that the answer given would be the same as that applied to the GB legislation.

459. Anyway, I will rehearse my other argument. Article 11 of the ICESCR makes for quite refreshing reading, although it is a bit utopian:

"The right to an adequate standard of living."

460. I have had trouble for years with the Inland Revenue, or Her Majesty's Revenue and Customs (HMRC), as it is now called. It takes money off me all the time, yet I have no redress. Do you think that I have a possible action, or is this not just pie in the sky?

461. **Dr Latif**: Taxation, in and of itself, does not necessarily infringe the right to an adequate standard of living. We are talking about things such as the right to food, shelter, heating — those sorts of basic accommodations. We mean food and clothing issues rather than taxation, which Governments are legitimately entitled to take.

462. **Mr Cree**: I can tell you that taxation has a very big effect on all of us.

463. **Dr Latif**: Yes, it does. I do not dispute that.

464. **Mr McLaughlin**: Thank you very much for your presentation. By way of opening, are there any appeals notified in the legal process in Britain?

465. **Dr Latif**: Not as yet. The case has not gone any further.

466. **Mr McLaughlin**: There is still time. That could become relevant if we end up with a Court of Appeals position. It would certainly have a significant effect on courts here.

467. **Dr Latif**: Absolutely, yes.

468. **Mr McLaughlin**: I raise that only because the process may not have reached the end of its course.

469. I am interested in the comment in your briefing paper:

"the proposal to remove the duty to seek trade union consent risks regression ".

470. As a statement of obvious consequence, I understand that. To what extent do you think that that would be the case? This is a particular set of circumstances that

does not apply in all staff/management relationships and negotiations that seek to find agreement. That is probably the norm, as opposed to the exception. To what extent could we stand over that as being a serious risk of regression?

471. **Dr Latif**: The standard has been set by the UK legislature already, and it has now stepped back from that. It may not be the trade union arrangements in other public sector bodies across the world. Once the UK has arrived at a certain piece of legislation, there needs to be a very good reason for it to step back from it. The treaty monitoring system would want to know the reasons, what the legitimate aim was, whether it was proportional, and what the impact has been on the people affected. Given all those circumstances, this risks being a regressive measure. The UN committee would want to be satisfied that there was no other way of meeting the legitimate aim than the change to the legislation.

472. **Mr McLaughlin**: Are there any other examples in European human rights legislation of where trade union agreement is required before a Government can act, or is this unique?

473. **Dr Latif**: I am not aware of it being in other jurisdictions, but it is not something that I have looked into. We could certainly provide that information to the Committee.

474. **Dr Russell**: At the minute, the standard is set. Consent, obviously, is a higher threshold than consultation or negotiation. The commission is also mindful that the state report on the International Covenant on Economic, Social and Cultural Rights is due in June. The Executive will have to input into the report. As this is a live issue, it will be highlighted and under consideration for the UK as a whole. The precedent has already been set in the UK, so there is an opportunity for Northern Ireland to look again at what has been proposed and choose whether it wants to go in the same direction.

475. **Mr McLaughlin**: I am quite certain that there will be views on this issue around the table, and I would be surprised if there were unanimity. There is a prevailing culture across a fairly wide geographical canvass. There is the suggestion that a previous Labour Administration tried to introduce the change in the standard that had been set. It was so far back that I cannot remember who introduced it, but I suspect that it was an earlier Labour Administration. The current coalition Government have taken another run at it. It appears that there is a prevailing wind in Westminster and that the measure will enjoy cross-party support and, in effect, will change the current arrangements.

476. You are not politicians, of course, but I have to set it out in those terms because that then puts the Executive and the Assembly in a particularly difficult position. I suspect that many people will be very interested in taking a more enlightened approach to protecting retirement rights as well as employment rights. The issue of parity has had interference, even when trying to get agreed positions among the parties on issues that might otherwise be candidates for that type of cross-party agreement. In the circumstance that you are talking about, the Executive will have to dip into their pocket if they break parity and decide to protect the position currently enjoyed by civil servants, when all the signs point to that position being changed significantly in Britain. It is a point of departure and a choice that would be very difficult. That is not your issue, but you will be asked to comment on it, because other human rights could be affected by the Executive's inability to fund their wider range of programmes if they have to ring-fence some of those finite funds to maintain the status quo in the superannuation arrangements, and so on. I am quite certain that you will be asked to comment.

477. **Dr Russell**: We have already made some comments in our submission. We recognised the issue of parity and the fact that, in the past, it has been

of benefit to the Civil Service here, and that, as a consequence now, to follow parity would be of detriment. That is accepted by the Commission.

478. You are right; we cannot make the decision. All we can point out is the level at which trade union rights have been recognised to date in the jurisdiction and the suggestion that the removal or reduction of those rights would be retrogressive in human rights terms. We totally accept that there is a balance to be struck and that, ultimately, it is a political decision.

479. **Mr McLaughlin**: It is entirely my fault; I did not get to the point as clearly as I should have. You mentioned the risk of regression of existing rights. As human rights advisers, that is entirely appropriate. I am suggesting that, in circumstances where finite funds are impacted by a decision taken in Britain, to adopt a different decision here, say, to support the status quo, will reduce funding and programme delivery in some other areas, which may also raise other human rights issues.

480. **Dr Latif**: It is important to detach the context of the Bill from the scheme that is to follow. The scheme has yet to be agreed and consulted on, and the Bill, although removing the duty to seek consent, places a duty to consult with the relevant trade unions.

481. The scheme itself has yet to be negotiated and agreed; so what it will involve financially has yet to be determined. It is important to detach the two; first, the duty to seek consent is being removed, which, as I said, is based on an assumption that the unions will not agree, and secondly, the scheme itself is still to be agreed.

482. It is important not to pre-empt the outcome of that consultation and negotiation with the trade unions. The commission would be more concerned if the effect of the Bill were to say that there will be consultation but that the trade union movement will get nothing other than that which has already been agreed in Great Britain.

483. **Mr McLaughlin**: I can see that that negotiation will be an interesting one, particularly from the trade union side. It illustrates in a very particular way that the issue of parity needs to be considered very carefully across a whole range of issues.

484. **Mr Beggs**: In your written submission, you say:

"The implications of the Bill must be considered in light of the socio-economic situation of Northern Ireland."

485. Your presentation this morning has been peppered with the phrase: "the socio-economic situation of Northern Ireland." What aspect of human rights must be considered in the socio-economic situation of Northern Ireland? Is it the human rights of the civil servants or those of the citizens who may be affected adversely by cuts in health and education and programme delivery in disadvantaged areas? Whose human rights are you talking about?

486. **Dr Latif**: We are talking about everybody's human rights. Civil servants are also citizens; their rights are indivisible from and equal to anyone else's. That is the point that we are trying to make. These cuts need to be seen in the round. There is a balance to be struck, and human rights law is very aware that the people who may be affected adversely by these changes must be considered in light of the effect that it will have on the community as a whole. Human rights bodies and the courts need to be satisfied that a fair balance has been struck between those rights. The socio-economic rights that I talked about today are not absolute. There is a realisation that resources are not infinite and that there is a limit on them, but this is also about legitimacy, proportionality and striking the right balance.

487. **Mr Beggs**: Do you accept that involving human rights in socio-economic issues such as this is hugely problematic and hugely political, and that there is a danger that the public will be worse off? The public are paying for you to make a presentation here today. They will pay for

legal aid taken on some sort of human rights grounds and for the defence, if it ever got to court. Do you accept that, at this time in Northern Ireland, this is not an issue that would be handled in a court?

488. **Dr Russell**: The commission can advise only on treaties that are ratified by the UK Government. The International Covenant on Economic, Social and Cultural Rights has been ratified by the UK. It is a binding obligation on the UK Government, so it is completely relevant to considerations in this issue. The proportionality of the decision made in balancing one set of rights with another is a political discussion that has to take place and, as Nazia said, has to be considered. However, it is perfectly correct for the commission to give advice on economic and social rights.

489. **Mr Beggs**: In your opinion.

490. **Dr Latif**: I would add that the UK has ratified the convention; it has entered into an international obligation.

491. **Mr D Bradley**: From the trade union point of view, this is quite a radical shift from the current position of strength, in which its consent is required, to one in which only consultation will be required. After that, when the Bill is brought to the Assembly, there will be no need for Assembly assent. So, there will no longer be any safeguard in this for the unions. I note your point that the Administration here are responsible for the protection of human rights, and your suggestion that the Assembly should have a more robust role in dealing with this order. I am inclined to support that position. May I presume that you think that Assembly assent should be required for the Bill or for any changes made as a result of it?

492. **Dr Latif**: That would be one possible model. The Assembly is an institution that reflects democratic rights. Therefore, it would be proper for the Assembly to have to assent, and possibly go a step further and ask the employer to re-enter negotiations if the Assembly is not satisfied that constructive negotiation has taken place.

493. **Mr McQuillan**: Would breaking parity on this give the Westminster Government more leverage to introduce regional pay rates that would be more detrimental to the Northern Ireland Civil Service?

494. **Dr Latif**: First, this advice is not grounded on the commission's opinion; it is grounded in the international obligations to which the UK is a party. We are aware that the parity issue is complex. We say that it is not about finding the lowest common denominator or about a race to the bottom. If there is a worse deal on offer to people in Great Britain in any setting, there should not be an automatic rush to get Northern Ireland there. Every situation has to be considered in light of the impact that it will have in Northern Ireland. There are other political realities that must be taken into account, but the commission is not in a position to comment on those.

495. **Mr McQuillan**: Would the introduction of the Bill affect your organisation directly?

496. **Dr Latif**: No. As a Northern Ireland Office-sponsored body, the commission is already affected.

497. **Mr Girvan**: I disagree with what Dominic said about agreeing to go back to negotiate with the unions on this and give them the opportunity to consent to it. I believe that even by saying that we accept that, we would be indicating that they could come back in and negotiate. By doing so, we would effectively be breaking parity.

498. **Mr D Bradley**: Chair, I did not actually say that. Dr Latif said that. To be accurate, I said that requiring Assembly assent for anything that resulted from the Bill would be an extra safeguard.

499. **Mr Girvan**: Fair enough. I take that on board. As far as I am concerned, I think that we would be setting the Executive and the Assembly up for incurring severe costs that we cannot fund and will not be in a position to fund. In doing so, we would be going down the very route that Adrian mentioned: by doing it in

one area, we open the door to breaking parity in a number of others. That could ultimately create major problems for us in areas such as equal pay throughout the UK. It is vital that we do not do that. I appreciate that you have a job to do; one that you are here to highlight. I take on board that you are here to articulate your role, but we do not necessarily have to accept that. We understand exactly where you are coming from on the issue, but, unfortunately, that is where we stand — or where I stand, anyhow. I know that that is not always the message that you want to hear.

500. **The Chairperson**: OK. I will not ask the witnesses to respond.

501. You talked about the court case in Britain, and you said that the outcome there did not necessarily apply here because there may be a different set of circumstances. The outcome of the case that was deemed acceptable there was based on planned redundancies in Whitehall. If a similar prospect of planned redundancies arose, are you aware of, or can you advise us about, a material difference in circumstances here? The outcome was deemed acceptable because it was to achieve a particular outcome in Whitehall, whereas you seem to suggest that another court may consider the circumstances applying here to be different.

502. **Dr Latif**: I am just saying that the same outcome would not be guaranteed in Northern Ireland. The same human-rights-proofing would have to be gone through here, in light of the circumstances here. The unions' claims were dismissed in that case, but it cannot be assumed that the same outcome would result here.

503. **The Chairperson**: Was the case dismissed on the basis of the planned redundancies in Whitehall?

504. **Dr Latif**: It was dismissed on the basis that the interference was legitimate because the aim was to reduce the national deficit. The judge said that to comment any further would be to go into macroeconomic policy, which as a judge he was not inclined to do.

505. **The Chairperson**: So, it was a broader issue than just the specific plan for Civil Service redundancies in Whitehall.

506. **Dr Latif**: The legitimate aim, the reduction of the national debt, was the crux of the case.

507. **The Chairperson**: In the absence of any other questions, thank you very much for that very helpful evidence.

4 July 2012

Members present for all or part of the proceedings:
Mr Daithí McKay (Chairperson)
Mr Dominic Bradley (Deputy Chairperson)
Mr Roy Beggs
Mr Paul Girvan
Mr William Humphrey
Mr Mitchel McLaughlin
Mr Adrian McQuillan

Witnesses:

Ms Margaret Coyle	*Department of Finance*
Ms Margaret Miskelly	*and Personnel*
Mrs Grace Nesbitt	

508. **The Chairperson**: I welcome the following witnesses from the Department of Finance and Personnel (DFP) to the Committee: Grace Nesbitt, the head of Civil Service pensions; Margaret Miskelly, the head of policy in Civil Service pensions; and Margaret Coyle from policy in Civil Service pensions. We have provided you with a summary of the key issues that arose from the evidence given to the Committee. Perhaps you can outline the provisions in each clause, with particular reference to the Department's response to each of the issues set out in the table. I think that that is the best way in which to approach it.

509. **Mrs Grace Nesbitt (Department of Finance and Personnel)**: I will endeavour to do that as best I can. However, I point out that I only received the paper this morning. I will attempt to do what you ask, and while preparing my introductory remarks for the Committee, I anticipated having to do so. I have tried to do that to the best of my ability, and, from having a quick read of the paper when I was sitting in the back row of the Public Gallery, I think that I have covered most of the issues. However, hand on heart, I cannot say that I have covered all of them. I am therefore happy to follow up in writing to the Committee.

510. I will make some opening remarks. I welcome the opportunity to meet the Committee again to discuss the Superannuation Bill. I previously briefed the Committee on the Bill on 7 March, prior to its formal introduction in the Assembly on 12 March. The Department has responded in writing to a number of the issues that were raised by the Committee on 7 March. Those matters included the analysis of the pros and cons of breaking parity with the Home Civil Service; comparative examples of the estimated compensation benefits under the current scheme compared with the new scheme; and the Department's view on whether provision could be added to the Superannuation Bill to amend the Superannuation (Northern Ireland) Order 1972 to require scheme amendments to be subject to Assembly procedure.

511. The Department also responded formally to the Committee's request of 25 May for views on the equality impact and human rights considerations associated with the Bill. A written response was also provided on the issues raised in the paper by the Assembly's Research and Information Service (RaISe) on the provisions for consultation. The written responses set out the Department's position on the issues raised to date.

512. If the Committee permits, I think it would be helpful if I were to address some of the main points. I also intend to —

513. **The Chairperson**: Grace, it might be better if we went through it issue by issue. Members have the table in front of them. That will allow us to deal with this as expeditiously as possible.

514. **Mrs G Nesbitt**: OK. I am not sure how prepared I am for that. I will respond to the issue of the consultation. The Department considers that replacing the trade union veto on detrimental changes to the Civil Service compensation scheme with a new requirement to

consult — with the aim of reaching agreement — to be necessary and appropriate. It will advance best practice and effective consultation. There was a bit of talk in the earlier session about what "consultation" means. It is defined in the Information and Consultation of Employees Regulations (Northern Ireland) 2005, as an "exchange of views" with a two-way process of dialogue and discussion. Those regulations are also known as the information and consultation of employees (ICE) regulations, which is perhaps an inappropriate abbreviation. That definition is also referenced in the paper from the Assembly's Research and Information Service. The Department contends that the retention of the veto would be contrary to the meaning of "consultation" in that definition.

515. The Department accepts that the reform of compensation is a difficult issue for civil servants, and that the proposed reform of pensions is contentious. There is always a duty to consult, and that is referenced in the pensions legislation.

516. The Department has established a pensions forum between Civil Service management side and trade union side. Its purpose is to allow engagement on all the prospective changes to the Civil Service pension compensation arrangements. The forum has established a constructive two-way engagement with the trade union side. I do not know whether I am a shadow boxer providing clarification, but I will provide some clarification on the dates. The forum has met a number of times. The terms of reference were agreed and signed off formally on 21 June. If the Committee wishes, I can provide a copy of the terms of reference. The forum has been established as a primary method of conversation between management and trade union sides, with the aim of reaching agreement on changes to pension and compensation scheme arrangements.

517. The Research and Information Service paper questioned whether the Bill should specify that consultation should take place at a time when proposals in GB are at a formative stage. Again, this was touched on earlier. The Civil Service unions were represented on the Council of Civil Service Unions and was involved directly in the central "negotiations" with HM Treasury and the Cabinet Office on the Home Civil Service compensation arrangements, which were actually brought in — and this is where I know it gets a little bit confusing — under the previous Labour Government. The unions here were represented on the council. Although the Council of Civil Service Unions has since been dissolved, a new grouping has been set up, a national trade union committee. On that committee are the seven nationally recognised trade unions that represent the Civil Service, including the PCS, the Prison Officers Association, Prospect, the FDA, NIPSA, Unite and the GMB. That would be a way for the unions here to have input into any proposed changes happening in GB at a formative stage in the arrangements.

518. The Bill proposes an equivalent amendment to those introduced in GB on reporting duties. The fact that the Department must report to the Assembly on the consultation that has been undertaken is an additional measure to the appropriate steps that have to be taken to secure agreement.

519. As regards consultation in the context of parity, the paper asks whether consultation under the Bill may be taken into account by DFP and whether consultation could influence the outcome. The Department has been clear in its stated position, which is to maintain parity with Great Britain on the reform of compensation arrangements. The response to any comments or questions arising from the consultation exercise will therefore need to take account of that position. Again, there is a statutory requirement under the Superannuation (Northern Ireland) Order 1972 for the Department to consult the unions on all proposed amendments.

520. The human rights issue relates to clauses 1 and 2, which deal with the removal of the veto and the need to consult with a view to reaching

agreement. I have done a little bit more work on some important points, and I think that it is important to bring those to the Committee's attention. The Human Rights Commission, in its submission to the Committee, raised a number of points on the effect that the Bill might have on human rights, and the Department would like to add to that. The commission stated that the proposal to remove the trade union veto and detrimental changes to the compensation scheme "risks regression" in the protection of a number of human rights, including the right to form and join trade unions for the promotion and protection of economic and social interests and the right to collective bargaining. The exact rights are set out in the paper that has been given to the Committee. We have consulted the Departmental Solicitor's Office, and we do not agree with the contention put forward by the Human Rights Commission. The Bill makes no attempt to interfere with the right to form a union. Rather than impeding union activity and collective bargaining, the Bill actually imposes a new duty on the Department to engage with the union with a view to reaching agreement.

521. In the case taken — and I have actually re-read the case — by the Public and Commercial Services Union against the Minister for the Civil Service in Great Britain, which is also the case referred to by the Northern Ireland Human Rights Commission in its evidence session on 9 May, the judge dismissed the union's claim that the provisions in the Superannuation Act 2010 introduced in Great Britain amounted to a violation of article 11 of the European Convention on Human Rights. If the Committee is interested, I can supply it with a copy of the judgment; it is quite an interesting read. Members may be aware or may wish to note that article 11 provides for the right to freedom of peaceful assembly and the freedom of association, including the right to form and join unions. Although the decision of the High Court in London may not be binding in Northern Ireland, the legal view is that it would be almost certainly be followed by the courts in this jurisdiction as it is so persuasive that it would be foolish not to apply it.

522. A related issue raised by the Northern Ireland Human Rights Commission in its evidence to the Committee, and on which the Committee requested a response, concerns the implication and variances between the socio-economic position in Whitehall and that in Northern Ireland, in demonstrating the proportionate balance between a socio-economic interest here and the legitimate human rights consideration. This, again, relates to the legal case that was taken by the Public and Commercial Services Union in Great Britain.

523. The union involved claimed that the rights to redundancy pay in the compensation scheme for the Home Civil Service amounted to "possessions" and that changes made to the scheme constituted an interference with those possessions under protocol 1 of the European Convention on Human Rights.

524. In delivering its ruling, the High Court's primary concern was not whether interference to protected rights had occurred, but whether an interference with rights to possessions could be proportionately justified, and whether a fair balance had been struck between persons affected and the community as a whole. The High Court ruled that the coalition had acted proportionately in reforming them, and that it had done so in pursuit of a legitimate aim; that aim being to reduce the national deficit. That legitimate aim was accepted by all parties, including the unions. I think that the key point that has been missed in some of the discussions on this issue to date is the justification argument. The argument included a reference to a previous legal case, in 2001, and it included the fact:

"the allocation of public resources is a matter for ministers, not courts."

525. Another key issue was that the change, the impact on the individuals concerned — about which the Committee heard evidence from trade union colleagues — was, in the judgement's terms,

not "a disproportionate or excessive burden". Rather, the arrangements were "reasonable and commensurate". That was also noted in the finding last year.

526. The Human Rights Commission also made the point that the socio-economic conditions in Northern Ireland could result in a different outcome, if a test of proportionality was required. Our view is that the socio-economic situation facing people in Northern Ireland and the necessity to create savings to the public purse is exactly the same as that which applies elsewhere.

527. The financial reality is that the coalition Government are committed to the policy that public service superannuation costs should be controlled across the United Kingdom as part of their overall strategy. You already have evidence of, and there has been discussion about, the financial consequences of not introducing a change. I am not going to repeat that again. HMRC may not be a particularly popular organisation, but its Northern Ireland staff are members of the Home Civil Service and already enjoy, or experience, different terms than those in other parts of the Home Civil Service. So, we already have people working in the Home Civil Service in Northern Ireland who experience different terms. The big question is whether we want to have different arrangements continuing to apply to people working in the Northern Ireland Civil Service. Are we prepared to fund that if and when the need should arise?

528. Overall, the Department's view, having read the judgment, is that if we had a similar legal challenge here, the legitimate aim would remain the same, and the justification arguments in support of those legal aims would be equally relevant and could be successfully argued in the event of a challenge. I thought that it would be helpful to bring that to the Committee's attention. Again, this would be a matter that would arise if the union or party decided to mount a challenge.

529. The Equality Commission's responses do not relate to any specific clauses in the Bill; they are really about the planned changes to the compensation scheme. I thought it would be helpful to clarify matters. The commission raised two issues about the Department's proposal. The first relates to the Department's duties under section 75 and its commitments under the equality scheme. The commission stated that the Department should consider the equality implications of change in the current arrangements under the Northern Ireland compensation scheme when bringing forward proposals for a revised compensation scheme. The Committee has also requested a departmental response on what consideration it has given to carrying out consultation and a full equality impact assessment on its proposal.

530. The Department has considered those, and I can confirm that, to date, it has fulfilled its equality commitments. The Committee will wish to note that the Department has conducted an equality screening exercise for the Superannuation Bill and will carry out an equality screening exercise on proposals for reform of the Civil Service compensation scheme. The outcome of the equality screening exercise for the compensation scheme will determine whether a full equality impact assessment is required. That is the normal process. The equality impact assessment was not required for the Superannuation Bill because it was screened out. The Department will also publish any draft amendments or impact assessments in relation to the proposed reforms of the compensation scheme when the Superannuation Bill has completed its passage through the Assembly and the content of the Bill is finalised.

531. The second issue raised in the Equality Commission's submission relates to scheme compliance with anti-discrimination legislation. The Committee also requested information on the consideration that the Department has given to ensuring that its proposals comply with the Employment Equality (Age) Regulations (Northern Ireland)

2006. We have done a little bit more work on that. The key principle in the proposals for the reform of the Civil Service compensation arrangements since the Labour Government published their initial consultation document was to ensure that the redundancy terms were not age-discriminatory. I have rehearsed that issue to the Committee before, and members will be familiar with it. The proposed changes will remove what could be perceived as a vulnerability. The Department's opinion is that the proposed changes will ensure that the new arrangements comply with the Employment Equality (Age) Regulations.

532. It might be helpful for members to note that a number of claims have been launched against the new compensation scheme in GB. To date, they have all been unsuccessful. Four claimants, who were all over the age of 60, alleged that the terms of the new compensation scheme relating to voluntary exit are discriminatory on the grounds of age on the basis that employees who are 60 or over have their compensation capped at six months' pay whereas compensation for employees who are under 60 is capped at 21 months. The cases were all dealt with at a preliminary hearing on 23 February 2012, and the unanimous judgement was that the claimants were in materially different circumstances to their comparators. As a result, the employment tribunal rejected all the claims. I understand that three of the individuals are pursuing the matter to an employment appeals tribunal, but that is as far as they have got. It is important to note that, given the magnitude of redundancies in the Home Civil Service, this is quite a small number of claims. It is a very specific grouping in the, unfortunate, vast majority of people who have been made redundant in the Home Civil Service. I will come to that later. There has not actually been a significant number of changes.

533. I am conscious of time. The submission from the Chartered Institute of Personnel and Development (CIPD) does not relate to any specific clauses in the Bill, so, in the interests of time, I do not propose to comment on it. It might be helpful to note a few high-level responses, because there is an issue about how well we compare with other schemes. Other schemes in the public sector have made changes to their compensation arrangements in Northern Ireland. This is where it gets really tricky and complex, so I will stick to very high-level examples; they are not to be quoted as pension examples for anybody.

534. Broadly speaking, under current voluntary arrangements, the terms would be 36 months' pay. That is at a very high level; there are so many variances to that, but keep that figure in mind. That is what you would get in the Civil Service under our current scheme. The proposal is to reduce this to 21 months, with a lot of variances in between. For teachers, it is 15 months; for health, it is 24 months; and, for local government, it is 24 months. Teachers and health changed their terms in 2010 and removed age as a reference point. Local government changed the terms of its scheme in 2007. I am not familiar with the detail of those schemes before they made the changes. I am aware — and this was referred to earlier — that teachers had a particular arrangements for a year. They enhanced their arrangement; I think that they brought it up to 30 months. A special arrangement was introduced for teachers here. It shows where civil servants in Northern Ireland currently sit as opposed to those in other broad parts of the public sector.

535. You also asked whether the trade unions' veto on the compensation scheme applies to other parts of the public sector. I confirm that it does not. There is a duty in the legislation for other sectors to consult with the relevant trade unions, but the veto, to abbreviate it to that term, does not apply to any other part of the public sector in Northern Ireland. I cannot comment in respect of any other part of the United Kingdom, but I suspect that it does not apply to any other part of the public sector in the United Kingdom.

536. The union's evidence related to clauses 1 and 2, which is the substantive part of the Bill, covering the removal of the veto and the new consultation arrangements. In a sense, that is the essence of the Bill. In the trade union's evidence session in March, the representatives commented that they had not had any negotiation and that they had only had information provision sessions on what the Minister was thinking, where court cases were at and so on. That is one of the reasons why we have moved to establish the forum and to reconstitute it as a formal body.

537. I noticed that reaching agreement on the new compensation arrangements with the union was raised in the oral evidence of the Human Rights Commission. The commission cited the Republic of Korea as an example of good practice in collective bargaining arrangements.

538. **Mr Beggs**: Is that North Korea?

539. **Mrs G Nesbitt**: Someone else made that comment to me, so I re-read the submission. The Human Rights Commission did not say whether it was North Korea or South Korea. The Commission described it as the Republic of Korea, so I am quoting what it said because I did not want to get it the wrong way round. It quoted the Republic of Korea, and who I am to disagree with the Human Rights Commission?

540. There are some other points that I thought it might be helpful to pick up on. The pension legislation, the Superannuation Order and the Superannuation Act in GB always use the term "to consult". We have researched this matter, and the term "negotiate" is not used. In my experience, for consultation to be meaningful, it has to be timely and relevant. We have shared our intention with trade union side right from the start of the pension forum when it first met last year. We gave trade union side the detail of the Superannuation Bill and told it our intention as regards the compensation scheme. We have shared with trade union side the Executive decision made in February this year about the Superannuation Bill and gave it the detail of the clauses. A key part of consultation is being transparent and providing information in a timely way, and that has happened.

541. The recent meetings of the pension forum were on 15 May and 19 June. Trade unions have offered to engage and negotiate on this matter, and they have made their position clear to this Committee. They have made it clear that they wish to adopt a position of parity plus, and they also want an approach that no detriment should be taken on this issue. The Department's remit is to apply the terms of the Home Civil Service to civil servants who are working in Northern Ireland, essentially as a point of principle but also on the grounds of cost. As an official from management side working with the unions, it is very apparent to me that based on the stance of the unions and the stance of management side the likelihood of agreement being reached on this matter is extremely unlikely. I remind members that union officials have been through the process already when these changes were introduced by the Labour Government a few years ago. They know the detail of it, and it is important to note that.

542. If you change the language to use the term "negotiate", it is a term used more commonly in dealing with pay, and I have dealt with pay. Even when we have negotiated on pay in the Civil Service, and I am not getting into the regional pay issue again, management have still had to impose a pay deal on staff on occasions. So, negotiation does not always mean that you ultimately reach agreement. At the end of the day, you can describe it as a veto, but somebody somewhere has to make a decision. What this legislation is doing is removing that decision, or veto, however you like to describe it, from the union.

543. I am conscious of time. I want to remind you that the Department's purpose in bringing this Bill forward is to replicate the changes made to the compensation

arrangements for civil servants in Great Britain and to maintain similar provisions to pension and compensation arrangements in the Northern Ireland Civil Service with that of the Home Civil Service. Whether we are facing redundancies at the minute for those people who are members of their scheme, whether members of the Civil Service or various NDPBs, is almost an irrelevance, because I do not know what the future will hold, and I think that is a key issue of which the Committee needs to be aware.

544. The line we are taking is that we wish to have similar arrangements to those in the Home Civil Service and to be prepared. If we do not change, as I pointed out to the Committee before, there will be two costs. One will be the cost of having different systems and arrangements in place, and I will not rehearse that again as you have it in my written evidence, and the second will be the cost of paying extra to civil servants in Northern Ireland. Those are the key costs with which we will have to deal.

545. **The Chairperson**: I am conscious of the time and of the fact that we are having difficulty in keeping a quorum. I know that some members want to make comment. I am going to ask the Committee Clerk to go through the different sections, because we need to agree on a rough way forward for a draft report. Perhaps members would like to intervene at particular points.

546. **The Committee Clerk**: When the Committee has its first meeting after recess, it will go straight into clause-by-clause consideration, so it is important that the Committee staff get a sense of the Committee's position, even in outline. We do not have to agree a hard and fast position today, so long as we can get a sense of what members are thinking about the various issues, particularly while the DFP officials are still here. I will go through the issues in the third column on the right-hand side of the table that is in members' packs.

547. The first two issues have probably been addressed. The third was raised by members in previous sessions about the lack of Assembly control over the scheme amendments under the 1972 Order. There seems to be a disparity of approach between the civil servants in the order and other public servants, local government workers, teachers and health service staff. So, the question is whether the Committee wishes to pursue a potential amendment to the Bill. The Department has confirmed that it would be possible to provide for Assembly control over the amendments. There are different forms of Assembly control, as members are aware, but the regulations in the other parts of the 1972 Order are made by the negative resolution procedure, which would mean that the Committee would have an opportunity to consider reforms made under the subordinate legislation and, if it had objections to any issues, it would have the opportunity to put down a prayer of annulment. It is really just to check with members whether that is something to pursue, and, if so, whether the Committee wants to ask the Department to consider preparing an amendment.

548. **The Chairperson**: Do Members have any views on this?

549. **Mr Mitchel McLaughlin**: I propose we do that. It is going to be very difficult to get acceptance across the board on this, but I think that it would be of some assistance if the Assembly had an opportunity to scrutinise and approve proposed changes. I support putting that to the Department. I welcome the fact that it has indicated that an amendment can be made to the order.

550. **Mr D Bradley**: I second that.

551. **Mr Girvan**: I would like some clarification in that regard. Is this coming in on the line of what you mentioned earlier, Mitchel, about how the teacher aspect had worked in on negotiation of that?

552. **Mr Mitchel McLaughlin**: No, I was not making any direct reference. I was using it as an example of how, when the Assembly is able to engage on issues, it can sometimes find middle paths.

We are in a very unfortunate situation, which is almost like a confrontation, and I think that referring things back to the Assembly is one way of balancing the arguments, as opposed to just putting a Minister in the invidious position of making a decision on them directly. In the interests of the democratic structures, it makes sense to bring it back to the Assembly, have the argument here, and have the decision made on the Floor. Members can nail their colours to the mast.

553. **Mr D Bradley**: I second that proposal.

554. **The Committee Clerk**: It would be useful to hear the Department's view on whether it would be willing to bring forward an amendment, because if the Committee wishes to do so and the Department is not willing, we will have to draft an amendment during the summer recess.

555. **Mrs G Nesbitt**: The Department would not be willing to bring forward an amendment, because our view is that the current arrangements are satisfactory. I have more to say about why the Civil Service is treated differently, if time permits. If not, I can supply the information to you in writing. We have done some research on why the 1972 Act was constituted as it was. It was set up that way following a joint committee that was formed as a subcommittee of the National Whitely Council back in 1968. Those arrangements were put in place with the agreement of the unions, and it was referred to earlier in the unions' submission that those arrangements have been in place for some time.

556. In 1972, the arrangements were removed from primary legislation and were promulgated by the administrative acts of the relevant Minister. A number of safeguards were put in place at that time. We contend that one of those safeguards was about genuine consultation with staff interests, meaning the Whitely arrangements. I argue that the requirement to consult under the new changes that we are introducing have been strengthened, because there is now a duty to lay a report in the Assembly and to expose, for want of a better word, what steps have been taken by officials to secure agreement, albeit I accept the union veto is removed. That does not happen in any other engagement that officials have with the union. Think about pay, for instance. It does not happen on pay, which is a very significant issue that happens regularly.

557. As a departmental official, I contend that the ethos behind the 1972 Act is still intact; in fact; one of the key tenets is actually being strengthened, because consultation with the union is being more exposed to Members by the fact that a report is going to be laid in the Assembly. It could be subject to whatever scrutiny Members wish to give it, and that is something that, I know, officials will not take lightly. Therefore, the Department would not be willing to propose such an amendment.

558. **The Chairperson**: Mitchel, would you like to come back on that?

559. **Mr Mitchel McLaughlin**: I propose that the Committee prepares its own amendment.

560. **The Committee Clerk**: An amendment can be drafted, and the Committee can consider it after recess. It does not need to agree to an amendment today; it can consider a draft amendment after recess and after consideration of the evidence today.

561. **Mr Beggs**: Can we have some clarification on what the amendment would do?

562. **The Committee Clerk**: It would make any changes to the compensation scheme that are made under subordinate legislation subject to negative resolution procedure in the Assembly. At the moment, those changes can be made and laid, and the Assembly has no control over them. It differs from the position regarding other public sector workers, where any amendments to the scheme are made by regulations, which are subject to negative resolution.

563. **Mr Girvan**: If an amendment were made, would we not be breaking parity?

564. **Mr Beggs**: There would obviously be cost implications.

565. **Mrs G Nesbitt**: The answers is yes. In the arrangements that we have in place in our legislative process, it is not just the substantive content of the terms that apply to civil servants in Northern Ireland. The legislative arrangements mirror those that apply to the whole Civil Service. Therefore, it would be breaking parity. I hope that that is helpful.

566. **The Committee Clerk**: As I said, the Committee can consider a draft amendment at a later stage, after hearing evidence.

567. **Mr Mitchel McLaughlin**: Deciding that we want the Assembly to have a look at it is not breaking parity. Rather, that would depend on the Assembly's decision. The Assembly would consider whether parity is —

568. **Mr Girvan**: If the Committee put forward an amendment —

569. **Mr Mitchel McLaughlin**: Putting forward an amendment is not breaking parity.

570. **Mr Girvan**: No, but, depending on the way in which the vote goes, it could break parity.

571. **Mr Mitchel McLaughlin**: That may decide the attitude of parties, but we should not deny ourselves the opportunity to examine what a Minister intends to do.

572. **The Committee Clerk**: The other point that the Committee may need to consider is that, although it may be breaking parity in the legislative approach, that does not necessarily mean that it would be breaking parity when it comes to the reforms to the compensation scheme. It would simply give the Assembly control to examine those reforms before they come into force.

573. **Mr D Bradley**: The laying of a report before the Assembly is essentially a fait accompli, because the Assembly has no opportunity to oppose, debate or assess it in any other way. Therefore, although Mrs Nesbitt is flagging it as being majorly different from other areas, such as pay negotiations, it in fact does not offer Members any means of assessing what is in the report.

574. **Mrs G Nesbitt**: It provides a level of scrutiny. The analogy that I was drawing with pay is that the level of detailed meetings, and so on, that would be held with the unions on pay are not subject to such scrutiny, yet pay is an important issue. Therefore, I was saying that this is an added measure that will be available for public scrutiny of whatever level Members wish to apply. That is something different and something additional that I have not experienced or dealt with before. It will certainly be a learning experience for colleagues on the management and trade union sides.

575. **Mr D Bradley**: Essentially, it is a recipe for you to present us with a fait accompli.

576. **The Chairperson**: There are other clauses to get through. We do not have to make a decision on this today. The Committee Clerk can draft an amendment, and we can make a final decision on it in September.

577. **Mr Mitchel McLaughlin**: We might need a research paper. We have got one on the difference between consultation and negotiation. What about one on the difference between consultation and scrutiny? Your suggestion is right: let us prepare the amendment and take a look at it again.

578. **Mr Girvan**: At Committee Stage.

579. **Mr Mitchel McLaughlin**: Of course.

580. **The Committee Clerk**: The other issue is whether members are content with the wording in clause 2(2):

"duty to consult with a view to reaching agreement".

581. Are members content with that, or do you wish to consider amending the term to "negotiate"?

582. **Mr D Bradley**: I would prefer "negotiate" to "consult".

583. **The Committee Clerk**: Again, members may wish to consider draft amendments.

584. **Mr Girvan**: I am still somewhat confused about what was actually said. My understanding is that the consultation has already taken place at a senior level in GB. The unions that were sitting here this morning would have had representation at those consultations. That was the time when any movement could be made, and at a very early stage. I appreciate that we are coming to this very late in the day. When you insert the word "negotiate", you are giving an indication that you are willing to move position on cost, and that is something on which we have not even had any work done to identify the potential impact. Until you have the entire picture, I have a difficulty with changing that word.

585. **Mrs G Nesbitt**: It might be helpful if I comment.

586. In the detailed meetings and engagement that went on with the unions in GB, a number of options were looked at. Those are set out in the legal judgement, which found against the unions and for the Government. Some of that detail is contained therein. The options that were looked at included having a protected period and at a phasing-in period. I will not bore colleagues with the detail.

587. The other thing that I draw to members' attention is the bottom-line figure in the National Audit Office report, which I provided a reference to in an earlier submission, about the savings that were made as a result of the scheme being introduced in GB. It estimated that the cost savings were around 45% to 50% on average.

588. Therefore, the member is absolutely right. Detailed negotiations and consultations were held between management side and the unions in GB, at which the unions present here would have had a say and an input. That consultation went through all the different permutations and came up with a formula that most of the unions agreed to. Four out of five of the main unions agreed to it; one union did not agree. I think that that was the best that could be done within the cost envelope that was available. I do not say that it was the right solution, but it was the best that could be done in the climate that we face. The savings have proved to have been delivered, and they were verified in the National Audit Office's report.

589. I am not sure that, by looking at things differently in Northern Ireland, we could necessarily come up with something that would be significantly different or better. If we did, we would have the cost of introducing different systems to administer it. That, I think, is the issue that we have. The direction that the Executive have taken on wider public sector pension reform to date has been to follow arrangements similar to those in GB.

590. I add that the scheme is not part of the wider pension reform. I do not seek to confuse members, but it is something that was introduced by the previous Labour Administration. We delayed doing it because we wanted to wait until the various legal challenges were settled so that we knew what the final position would be in GB before we introduced it here. Therefore, we are already significantly behind because it was introduced in GB in December 2010. I trust that that is helpful.

591. **Mr Mitchel McLaughlin**: If the Committee were to argue for a negotiation, what would be the implications for the pensions forum? Does its role become nugatory in those circumstances? Is the forum what the name implies? Is it just a talking shop? Or is it an opportunity to work out agreements that would be binding on both parties? If not, I support negotiation, as opposed to a forum.

592. **Mr D Bradley**: I wonder how you can consult to reach agreement if you cannot negotiate.

593. **Mrs G Nesbitt**: The terms of reference for the pensions forum, which have been agreed with the trade union side, are:

"to consult with a view to reaching agreement"

594. I do not think that it is reasonable —

595. **Mr D Bradley**: Without negotiation.

596. **Mr Girvan**: Agreed negotiation.

597. **Mrs G Nesbitt**: I would add that, even with negotiation, we do not always reach agreement. We negotiate on pay and, as I said earlier, do not always reach agreement on it. We have in the past had to impose pay deals on staff in the Civil Service, to which the unions have objected. Therefore, even when you negotiate — there is a slight misunderstanding here — "negotiation" does not mean that you always reach agreement.

598. **Mr D Bradley**: Why not put the word in then?

599. **Mrs G Nesbitt**: Because the language that is used in our pensions legislation is "consultation". "Negotiation" is a very specific term, and, in the context of employment law and in my experience, it is used solely to deal with pay. It is used to deal not with pension issues but with pay issues. I am just explaining to members that, even with pay, where we do "negotiate" — as I said, that is the language that we use with pay — there have been occasions on which agreement is not reached with the unions, and pay deals have been imposed. I want people to be absolutely clear that, even if we use "negotiation", it does not necessarily mean that we will reach agreement, unfortunately, because that just does not happen.

600. **Mr D Bradley**: Is it just a load of semantics, then?

601. **Mrs Nesbitt**: I disagree with and take exception to that. My colleagues on management side and my colleagues on trade union side spend a lot of time and effort, whatever the issue, to try genuinely to ensure a meeting of minds. We do that in a very honest and open way and invest a lot of time, commitment and effort into doing that to ensure the best deal that we can. However, we may not always agree, and that is accepted and understood by both sides at the table.

602. **Mr Girvan**: My understanding is that, even though it is termed as "consultation", a number of options were put forward, and both sides were probably involved in bringing forward those options. That, effectively, is a form of negotiating, but it is classed as "consultation" in legislation, and that is the way in which it was done. Am I clear on that?

603. **Mrs G Nesbitt**: Yes, you are absolutely right.

604. **Mr Mitchel McLaughlin**: My concern goes back to the reluctance of the Department to accept the role for the Assembly. If we allied that approach to consultation at the forum, my concerns are reinforced. It strengthens the argument for the Committee to produce its own amendment. That, at least, sets a different context in which the forum can discuss any proposals that are brought forward and work towards finding agreement on them. Subject to successfully amending the order as it is present so that the Assembly has its say, I would move on from this particular issue, because it is subordinate to the first one.

605. **The Chairperson**: Members, can we try to get some agreement on this? Are members agreeable for us to come forward with an amendment and then make a decision on it in September when there is fuller attendance at the Committee?

606. **Mr Girvan**: I believe that, irrespective of what is being said here today, if this is going forward to the Chamber for discussion, all those aspects will be part of that. I do not think that we are going to get a consensus sitting round this table this afternoon. My view is that, if that is the way in which it is going to be done, that is what will happen. If the Committee wants to put forward a draft amendment for discussion, whether or not it is passed in Committee, that does not take away from the discussions that will take place in the Chamber. Is that correct?

607. **Mr Mitchel McLaughlin**: That would be my approach as well. Let us see whether

we can work out an agreed approach here in Committee.

608. **The Committee Clerk**: Does the Committee wish for a draft amendment to be prepared on that point, or is it content to —

609. **Mr D Bradley**: I propose that we prepare a draft amendment on "negotiation".

610. **Mr McQuillan**: I think that if we are going to go into as fine detail as we are at the moment, we are not going to get agreement. I think —

611. **Mr D Bradley**: We are not going into the detail.

612. **Mr McQuillan**: We are. We are proposing changing the wording, and that is detail.

613. **Mr Girvan**: I have not discussed this with Adrian, but if an amendment were to come before the Committee, and it includes that wording, we can vote on it as a Committee and make a decision. However, we are not in any position to do that today.

614. **The Chairperson**: We are not —

615. **Mr Girvan**: If it were up to me, I would keep the word "consult", as presented. That is the way that it would be.

616. **Mr Mitchel McLaughlin**: There would be a circular argument today, and I do not have the time for circular arguments. I am already late for another appointment.

617. **The Committee Clerk**: We need to know whether to do —

618. **Mr Mitchel McLaughlin**: If it is of any help, I think that you need to have the wording prepared as a backup in case the Committee needs to progress through the various sections of the report.

619. **Mr Beggs**: We have had an oral comment from the Department today. I want a detailed written comment from the Department as well, should we consider changing the wording. I would be nervous about changing it. In any situation in which groups are negotiating, if a third party comes in and starts doing other things, that can build expectations and alter the balance, shall we say. Therefore, I am nervous that the Committee, as a body, might get in the middle of trade union negotiations.

620. **Mr Girvan**: I appreciate that reference was made to a number of court cases, and we held back on bringing this forward to wait on the outcome of those legal challenges. In the light of the bearing of the legal challenge, it might be worthwhile getting some record of what was put forward at those court cases. It could have implications for the Assembly, should we make a decision. It would be helpful for the Committee to have that evidence in front of it before making any rash decisions.

621. **Mrs G Nesbitt**: As I said in my opening remarks, I could have given more detail but I got the Committee's paper just this morning. I will prepare a detailed written response to the comments made and set it out in a way that will hopefully be easy for members to follow. I can supply you with more information on the legal challenge. As I said, if it were taken here, the same argument could be applied.

622. **The Committee Clerk**: If DFP provides that written response, it will address the other issues that members had and any clarification or assurance that members might require. As to any amendments that need to be drafted for discussion after recess, the only other points arose from the research. One point is whether members wish to see included a minimum time period for consultation. The other point is whether the requirement for the Department to lay before the Assembly a report on the consultation could or should be strengthened. For example, it could require the details of any changes made to the provisions as a result of the consultation. Is there a sense among members that they want to see a draft for discussion of amendments in those areas?

623. **Mr Mitchel McLaughlin**: Yes, to both.

624. **The Chairperson**: The Office of the First Minister and deputy First Minister (OFMDFM) guidance on a reasonable time

frame for consultation is a minimum of eight weeks and a standard of 12 weeks.

625. **Mrs G Nesbitt**: We follow those time frames for consultation.

626. **The Committee Clerk**: Does the Committee wish for amendments to be drafted, or is it content to take the assurance from the Department on that issue?

4 July 2012

Members present for all or part of the proceedings:
Mr Daithí McKay (Chairperson)
Mr Dominic Bradley (Deputy Chairperson)
Mr Roy Beggs
Mrs Judith Cochrane
Mr Leslie Cree
Mr Paul Girvan
Mr William Humphrey
Mr Mitchel McLaughlin
Mr Adrian McQuillan

Witnesses:

Mr Harry Baird	*FDA*
Mr Brian Campfield Mr Billy Lynn	*Northern Ireland Public Service Alliance*

627. **The Chairperson**: I welcome to the Committee Mr Brian Campfield, general secretary of NIPSA; Mr Billy Lynn, member of the general council of NIPSA; and Mr Harry Baird from the FDA. There are apologies from GMB and Unite. I ask that you make an opening statement. Perhaps you can outline, in particular, the recent discussions on the Bill with the Department.

628. **Mr Brian Campfield (Northern Ireland Public Service Alliance)**: Thank you very much, Chairman. We provided a brief submission, and we were with the Committee previously. The discussion last time focused on the application of parity and the issue of negotiation and consultation. Although there was an exchange of information with the Department at that stage, there was not any negotiation or consultation as such. At the previous meeting, you will appreciate that we offered to enter into negotiations on the compensation scheme. Although the terms of the compensation scheme in Britain were unacceptable to all the unions, some of them took practical decisions because they thought that it was the best deal they could get. However, they were very unhappy about what was effectively a diminution in redundancy entitlement where civil servants are made redundant on a voluntary or compulsory basis.

629. We have been involved in what is called the Civil Service pensions forum, and I know that the Department will be able to answer questions on that too. More recently, we have just signed off on the constitution of the terms of reference for the pensions forum. It is to provide for consultation on changes not just to the Civil Service compensation scheme but to wider public sector pension changes that are coming as a result of UK Government decisions on a whole range of issues, including the pension age for public servants; the change in state pension age, which is due to go up over a period of years; and the introduction of career-average type pension schemes as a replacement for final-salary pension schemes. There are a number of other issues as well. It is expected that there will be a GB pensions Bill in the autumn. I know that the Department has been looking at ways in which it will introduce those changes to the Northern Ireland Civil Service.

630. We discuss a broader range of issues at the pensions forum, and the Superannuation Bill is one of the matters that have been under consideration. At the pensions forum, with the Department of Finance and Personnel (DFP) and the management side, we again offered to enter into negotiations on the terms of the new compensation scheme applying to Northern Ireland civil servants. That was our opening offer in light of the fact that we said to the Committee that we did not think that the Superannuation Bill was appropriate — certainly not at this stage.

631. What the Bill effectively does is remove what is termed a veto that trade unions or employee representatives have if there is an attempt to reduce the entitlements of civil servants in a redundancy situation. That is its main

raison d'être. So, the only reason for the Superannuation Bill is to put the Department in a position where it can introduce the same changes that have been introduced in Britain to Northern Ireland. I know that that raises the parity issue, and we dealt with that at the previous meeting. From our point of view, if that is the sole reason why the Superannuation Bill is required, we do not think that it should be made law. Its only purpose is to enable the Department to reduce redundancy compensation provisions.

632. In our brief paper — we deliberately kept it brief — we tried to explain our take on the Superannuation Bill. In paragraphs 9 and 10 of our submission, we refer to the word "labour". That does not relate to any political party; it relates to ordinary people who work for a living. It is labour as opposed to what would traditionally be called capital.

633. Our view is, and this is a very general point, that the changes to redundancy compensation, like a lot of other changes including taxes on public servants' pensions, are really part of an overall agenda to push back the rights and entitlements that workers have. We as a trade union have a responsibility to oppose any detrimental changes to the terms and conditions of ordinary workers, whether in the public or private sector. In this case, we are opposed to the Superannuation Bill because, effectively, it would reduce the entitlement in a redundancy situation.

634. Although we can argue that there is unemployment in other parts of the UK/Britain as well, we have made an argument about the labour mobility culture in Northern Ireland. Although I do not have the facts or figures to back it up at the moment, labour is not as mobile in Northern Ireland, and that is more to do with the fact that we are part of an island than our history. If people are made redundant from the Civil Service, or anywhere, it is generally more difficult to get employment, and that underlines our view that, in those circumstances, the redundancy payments should be as generous as possible.

635. The Department has told us that the Civil Service does not envisage there being any compulsory redundancies. In fact, at the moment, there are no proposals for voluntary redundancies. I know that we have difficulties in certain areas such as the Planning Service in relation to redeploying professional technical planners because of a surplus of planners. Management and trade union sides are working their way through that. I may be paraphrasing management side, who can no doubt speak for themselves, but our fears about reduced redundancy terms having an impact on workers are not likely to be borne out because there are no plans for redundancies.

636. We previously made the point that quite a number of non-departmental public bodies (NDPBs) are covered by these arrangements as well. There are smaller organisations, some of which are under significant pressure from a financial point of view in relation to the financial settlement, that would not have the same scope for redeploying staff as the Civil Service. Some of these organisations may employ 30, 40, 50, 100 or 200 people; therefore their scope for redeploying people in a potential redundancy situation would not be as great as that of the Northern Ireland Civil Service.

637. I am not sure whether this is in the public domain, and Billy may be able to elaborate on it, but there are also potential difficulties coming down the road in relation to a number of public service functions here, for instance, in social security offices, the Belfast benefits centre and potentially the Child Maintenance and Enforcement Division (CMED) as well. That is because some of the work that is carried out in Northern Ireland by the Northern Ireland Civil Service is done on behalf of GB Departments, and we have concerns that potential staffing issues and surpluses will arise from the situation we are moving into whereby we have the major welfare reform, not so much on the horizon, but certainly looming very large. With this reorganisation,

or modernisation as some people call it, the welfare reform changes, if implemented, are quite likely to lead to a rationalisation of benefits. That is likely to have a big impact on staff, not only in the Northern Ireland Civil Service but outside it as well; for instance, Housing Executive staff who will be affected by the changes to housing benefit or whatever. Staff in HM Revenue and Customs (HMRC) will be affected as well, but we are concerned that a significant number of civil servants could potentially be affected.

638. That has not been realised yet, and we hope that it will not be. We hope that solutions are found to these problems, but we could find ourselves in a position where staff are being made redundant either on a voluntary or compulsory basis, and we will get into a situation where the current entitlement is reduced. From a trade union point of view, that is unacceptable. That is why we argued that the legislation should not be pursued or implemented. I know that there are issues. The paper by the Assembly's Research and Information Service dealt with the meaning of "consultation" ,"negotiation" and various other things, and I am happy to attempt to answer any questions in that area. The Bill will provide the Department with the opportunity to reduce redundancy compensation terms, which, at the moment, it has to have our agreement on. The legislation will mean that the Department will no longer need our agreement, and it will, effectively, have a free hand.

639. On the negotiations, discussions or consultations, there will be a debate about what has happened in the Northern Ireland Civil Service pensions forum. We went back and said that we were prepared to negotiate on the compensation scheme, but the response from the management side was that the Minister wants to apply the GB changes. That meant that there was really no scope for negotiation. My view of the definition of "negotiation" — it is not definitive — is that if one party has one set of proposals and the other party has another set of proposals, it is not a negotiation unless there is something between those two positions, which is the outcome. The Department has told us that there is no scope for negotiations on the terms of the compensation scheme, and, therefore, the offer that we made to negotiate on the compensation scheme for the Northern Ireland Civil Service has not been taken up.

640. **The Chairperson**: On the final point you made, Brian, did the Department make you aware of its position on 19 June?

641. **Mr Campfield**: Yes. I am not sure whether you have the minutes for the meeting of 19 June. There has been a series of meetings, but I think that that response is probably recorded in those minutes.

642. That issue has arisen during a number of meetings of the pensions forum. We were before the Committee in April, and we formally made the offer to negotiate after that meeting. We were obliged to do that. Having told the Committee that we were prepared to negotiate, we had to advise the management side.

643. **The Chairperson**: The terms of reference of the pensions forum were agreed on 21 June. Is there anything in them that gives you hope that there will be a more positive engagement at the planned meeting on 9 July, or do you see that meeting as being more of the same?

644. **Mr Campfield**: The terms of reference and constitution of the pensions forum have been formalised and we have signed those off. The dilemma that we had was whether we should make an assumption and jump to the conclusion that there would be no real negotiations with the management side on proposals that relate to pensions or redundancy compensation. If that were the case, there was not really much point in engaging with them. Maybe it is a bit of a leap of faith on our part. We have to look at it positively. The management side has set up the forum, it will allow consultation with the trade unions and we have to be prepared to engage. Until we engage, we do not know whether

there will be some change or positive outcome, or whether both sides can meet in the middle between our position and theirs.

645. We have had a lot of exchange of information. The pensions forum is very useful in allowing us to keep track of legislative developments across the water and here, and to understand the Minister's intention and the Department's position. It remains to be seen, and the Superannuation Bill or the negotiations on the compensation scheme will be the tests of whether the pensions forum will result in effective consultation. When I give you a definition of "negotiation", effective consultation also means that people are prepared to change their positions and come up with solutions that are not exactly what both sides started with.

646. **The Chairperson**: I am coming to this fresh because I have just joined the Committee. Is the veto unique to civil servants? Were similar provisions introduced elsewhere in the public sector for teachers, nurses, etc?

647. **Mr Campfield**: The Superannuation Bill — I could be wrong about this; it is not something that I had prepared — covers more than just civil servants. I could be wrong, but if it applies to more than civil servants, it is a bigger issue than we identified and there will be a lot more interested parties. The Bill covers all public sector pension schemes, but it is divided up into different sections that relate to the health scheme, the teachers' scheme and the Civil Service scheme. I do not think that the provision applies to other public sector pension schemes; it is very much a Civil Service provision, but I can check that out.

648. Local government redundancy arrangements have been linked into the National Joint Council for Local Government Services and local authorities in Britain. Their redundancy arrangements for compensation follow on from that. There is a degree of discretion among employers in the local authority area in respect of what they are prepared to put up by way of redundancy payments to solve surplus situations.

649. **Mr Humphrey**: Thanks very much for your presentation, Brian. You stated that a civil servant said that the Minister was happy or wanted to implement the GB legislation. Is that right?

650. **Mr Campfield**: Yes.

651. **Mr Humphrey**: For clarification, who told you that, and at what meeting?

652. **Mr Campfield**: It sounds as though I am being interrogated, but that is OK.

653. **Mr Humphrey**: That is our job, to be fair.

654. **Mr Campfield**: Let me go through the papers. It was at a meeting — Grace Nesbitt is behind me now; she will hopefully be able to confirm that, unless all the people who were sitting on our side of the table were not listening properly. There was a meeting of the pensions forum in May. We also had a meeting in June. My understanding is that the Minister's view was that the GB rules on all these issues, including pensions and compensation, should be applied in Northern Ireland.

655. **Mr Humphrey**: That was at the pensions forum in May?

656. **Mr Campfield**: May or June; I need to check the minutes.

657. **Mr Humphrey**: Who told you that?

658. **Mr Campfield**: I think it was Grace — whoever was on the management side.

659. **Mr Billy Lynn (Northern Ireland Public Service Alliance)**: That was the opinion of all the trade unions that were at that meeting.

660. **Mr D Bradley**: The situation at the moment is that you have a veto, or you are said to have a veto. Has it ever been used?

661. **Mr Campfield**: Not in Northern Ireland. It was the subject of legal proceedings in Britain. The Westminster Government, through the Cabinet Office and the Treasury, decided to unilaterally change compensation provisions. That was challenged in court by way of judicial

review. The trade union view, which was that agreement had to be secured from the trade unions before any changes could be made, was upheld. The Government then introduced their equivalent of the Superannuation Bill to remove the veto. That is what happened in Britain. In Northern Ireland, we have not had occasion to use the veto because, from my recollection and experience, there have not been any proposals to dilute, diminish or worsen the redundancy compensation provisions.

662. **Mr D Bradley**: The Department has referred to:

"tacit acceptance by unions of a principle of parity".

663. If that is the case, how can you or, indeed, the Committee oppose the purpose of the Bill, given that it is intended to maintain parity?

664. **Mr Campfield**: We explained our view on parity at the previous Committee meeting we attended. Although we broadly favour parity, we made the point — I think that this is contained in our brief submission for this meeting — that we do not have strict parity of pay, for instance, in the Northern Ireland Civil Service.

665. This goes back to the dissolution of the national pay arrangements in Britain. Pay was negotiated centrally, and every Department was covered by those pay negotiations. There was a single pay and grading structure for all Departments. However, during Margaret Thatcher's time in power, national bargaining was basically dissolved, and each Department was given delegated authority to negotiate its own pay, and terms and conditions of employment. The issue of pensions was not subject to negotiation at that stage. So parity of pay was sort of dissolved, because in the Home Civil Service, the UK Civil Service or whatever you want to call it, each Department has delegated authority. So they have their own pay and grading structures, and different rates of pay. The Northern Ireland Civil Service was forced into that position as well. So we then negotiated with DFP the grading structures and pay rates that apply in Northern Ireland. It is invariably the case that there are different pay and grading structures across virtually every Department in Britain, from the Department for Work and Pensions (DWP) to the Department for Transport to the Department for Business, Innovation and Skills, or whatever, and in the Northern Ireland Civil Service. If you go through all the different Departments, you will see that they have different pay arrangements. So the strict parity that we had previously was removed by Government themselves, not by any act on the part of the trade unions.

666. Broadly speaking, we are in favour of parity, but from a trade union point of view, we also have to protect our members' interests. Normally in situations where there is worsening of terms and conditions of employment, we try to negotiate "no detriment" arrangements. I suppose that it is the "no detriment" dimension to our position on parity that brings us to the conclusion that the Superannuation Bill is not necessary and should not be implemented or adopted.

667. **Mr D Bradley**: At the previous session in, I think, May, there was discussion about — if my memory serves me right — the difference between negotiation and consultation. The new Bill allows for consultation with the trade unions, but not negotiation. If some changes were made to that particular clause, would that make the proposals more acceptable to the trade union side?

668. **Mr Campfield**: I suppose, in one sense, we would prefer it if we were not put in a position where we had to negotiate detriment to our members. To be frank, from a trade union point of view, we would prefer not to have to negotiate something that means that our members are worse off. However, in the real world, sometimes we have to do that in order to try to mitigate policies and to ensure that members are protected as best as possible. Given the Department's position that there is no scope for making any changes, the clauses in the Bill that refer to consultation do not inspire us. The

Department has told us that there is no point in having any negotiations on the terms of the compensation scheme, and that reference to consultation does not convince us that there will be any meaningful engagement. The Department has declared its position of applying the UK position lock, stock and barrel.

669. That takes you to the definition of consultation. Earlier, I gave you my take on what "negotiation" means, but meaningful consultation must include negotiation and both sides being prepared to move from their initial positions. In making the offer to negotiate, we indicated that we are prepared to consider moving from what we have at the moment. That is implicit. We are not happy about that, but we live in the real world and are prepared to do it.

670. If the Bill is carried with the current reference to consultation, I am not sure whether that will result in any significant change in the Department's approach. If there were additional clauses that deal with what consultation would mean in those cases, that could be a way to approach the matter. We need to get a form of words and explain definitively what that form of words entail for the management and trade union side — it could be something further about consultation and negotiation. There are occasions when negotiations break down and neither side moves, and those negotiations are unsuccessful. However, it they are meaningful and successful, you end up with something different from what both sides started out with.

671. Theoretically, if the worst came to the worst, other clauses could be introduced to strengthen the requirement to consulate or negotiate. Having said that, I am not absolutely sure that that would be sufficient to persuade the Department to engage in a meaningful way, and for it to move from what seems to be a fairly entrenched position with its automatic application of the GB rules.

672. **Mr D Bradley**: I understand that you prefer not to have to negotiate on changes that are detrimental for your members. However, the fact of the matter is that, day and daily, you negotiate on potentially detrimental changes in other aspects of the conditions and service of your members. In fact, a duty is placed on you by your members to tackle these issues.

673. If there were sufficient scope in the Bill for negotiation, it would seem to allow the trade union side to fulfil its obligations to its members. As you said, that does not always imply that it will lead to improvement, but, at the very least, it could lead to some sort of agreed position between the two sides.

674. **Mr Campfield**: I think that is a fair comment. It would very much depend on the form of words that is used, but it would also depend on the will being there on both sides to do that. We accept that we have to negotiate. We do our best to protect our members' interests, and, sometimes, that means that you have to accept something that is less bad than the alternatives. It may not be as good as what we have at the moment or what we wanted. However, that is business that we are in, and our primary responsibility to our members is to defend and advance their interests as best we can. We do not do that in isolation from our members; we are a very democratic union. We have to consult, and our members and elected bodies have to agree. None of us here have the right to enter into agreements with anybody on behalf of a group of staff unless that group of staff give its approval. We are very democratic in that respect.

675. **Mr D Bradley**: I have just one more point, Chair, if you will allow me, and I should have welcomed you to your position. I am sorry that I was late, and I wish you every success in your new role.

676. The last time we spoke, you had not as yet discussed these matters in any detail with the Department. You may have covered that before I came in. Has that situation changed?

677. **Mr Campfield**: We had an engagement with the Department at the pension

forum. However, we have not sat down and given the Department an alternative, and the Department has not provided different options. We have not got into that primarily because, after the last meeting, we declared our commitment to enter the negotiations, but the Department has effectively said that there is no scope for negotiations because it wants to apply the changes to the compensation arrangements that were applied in Britain. So, that does not provide for any meaningful engagement. I am happy for my colleagues to interject if I may be missing something.

678. **Mr D Bradley**: Is there a stand-off there at the moment?

679. **Mr Campfield**: There is a very polite stand-off at the moment, because we are still meeting, although there has not been any real engagement on this issue.

680. **Mr D Bradley**: Would it not be to your advantage to place your proposals before the Department as an alternative to what it has on offer, even though, as you say, it may appear to be inflexible on this?

681. **Mr Campfield**: My view is that that would be a matter for negotiations, and we are not going to negotiate in front of a Committee of any kind. It is not a matter for public consideration. It may well be that it is the approach that we take, but we would have to have a signal from the employer that it is prepared to negotiate before we would put anything on the table or suggest any alternative. Obviously, there are various skills associated with negotiations. It is not a question I would want to answer in case negotiations commenced.

682. Negotiations do not always work by one party jumping first. We sit around the table and have a discussion and see where that leads us. We could look at different options and, on a without prejudice basis, explore those to see whether there is any scope for agreement or whether it would be accepted by both sides or either side. There is a lot to be said for without prejudice negotiations. It is not like a game of table tennis where somebody bats to you and you bat back and it keeps going on until whatever happens. The way that we prefer to engage is to sit down and have a proper discussion, go through issues, identify pros and cons and costs, and identify whether things would be accepted by our members, whether they are deliverable or whether anything is judged to be a starter. We have said that we are prepared to negotiate.

683. **The Chairperson**: Before I bring Mitchel in, and just to follow on from what Dominic was saying, the Department pointed out to us that the unions have been and continue to be involved in negotiations and consultations at the early stages of proposed Whitehall changes. Is that the case?

684. **Mr Campfield**: In Whitehall?

685. **The Chairperson**: Yes.

686. **Mr Campfield**: I am not aware of any negotiations in the Civil Service. There were negotiations under the previous Labour Administration on the compensation issue, and that was taken over by the coalition Government in May last year. Negotiations were taking place in Britain, and we would have been involved, not directly in negotiations, although we could have been, but we were involved through our membership of what was the old Council of Civil Service Unions and the National Trade Union Committee that replaced it.

687. Our colleagues in the unions in Britain would have regular contact and negotiations with the Treasury and the Cabinet Office on a range of issues. I suppose we do not want to spend all our time in London and Whitehall negotiating issues when our colleagues, generally speaking, are well able to do that across the water; although, not always. In that sense, there have been negotiations in Britain on these issues.

688. **The Chairperson**: Is there a need for both if the issues have already been consulted on with your input and then there is your input here? Is there duplication there?

689. **Mr Campfield**: You could make the argument that we have been consulted indirectly on the changes. That would be the case in the absence of devolution. The fact is we have devolution and we have a responsibility to recognise that, if devolution exists, there is an opportunity to engage with the political system in Northern Ireland, including the Assembly, the Minister and the Department because they have devolved powers on these issues. We could try to get what we would consider a better outcome for our members in Northern Ireland than what they got in Britain. I am talking specifically about the compensation scheme.

690. **Mr Mitchel McLaughlin**: It is helpful just to get the nuances of this issue rehearsed. As I understand it, your conditional offer on negotiation was subject to the Bill being withdrawn, so it is a status quo situation. I can fully appreciate the explanation you gave for parity and your association with the legal challenges. We have come to the end of that road. I also understand the regionalisation that has occurred with regard to your negotiation. Generally speaking, the Assembly, as opposed to the Executive arm, would be sympathetic to the issues as they affect individual civil servants, public sector workers, etc.

691. The balance that we have to deal with is difficult for all of us in that the Executive are subject to fairly significant policy changes and changes in the budgetary allocation. As an Assembly, we had to go through a difficult negotiation over the budgets for the Departments, seeking efficiencies whilst protecting services. That is very difficult, particularly when you do not have the full range of fiscal authority or power when you can examine other revenue-raising options that are available elsewhere but not to us.

692. It is in that context that you could see the management side taking a fairly strong view and exempting themselves from the position that has evolved in Britain where the legal requirement for a union agreement — the veto, as it is called — was removed and asking why we would retain it here. From that point of view, that sort of argument makes a fairly semantic distinction in circumstances where the unions say that agreement was required, and the difference between negotiation and consultation seems to be fairly minimal. The management side may well be saying that it is a consultation, not a negotiation. We are now having it presented by yourselves and you can see how it gets a bit topsy-turvy.

693. I am concerned that whatever scrutiny mechanisms we have in the Assembly should be also deployed, or at least exercised, to ensure that there is no abuse of a changing relationship between the management side and the trade union side. We are being told formally that the current systems are unsustainable, very expensive, blah, blah, blah. We have heard all the arguments, and I do not need to go into them. We have had the situation where parity was sufficiently important for you to associate yourselves with the various legal challenges. When that did not work out, you are reverting to a more regionalised approach. It gets a bit contradictory and it will be used against you fairly significantly.

694. **Mr Campfield**: It is called not digging yourself into a hole.

695. **Mr Mitchel McLaughlin**: Well, you are hearing this from a friend; we can talk to each other. You will have to deal with that issue because you are going to be accused — not by me — of having your cake and eating it. It might be worth developing, in conjunction with significant support in the Assembly, an argument for meaningful negotiation on the basis that the ball game has changed because of what they have done in London. You, effectively, are arguing that the Assembly should just stand back and continue to accept the arrangement in which it is legally obliged to get your agreement before it takes any decisions on how it manages its resources. As a friend, I have to tell you that you are not going to win that argument.

696. **Mr Campfield**: We learn a lot from politicians in Northern Ireland as well; maybe that is where we got the having

the cake and wanting to eat it. I am sure that, if everybody around this table could get that for their constituents, they would want that. We would not be embarrassed by being accused of wanting to have our cake and eat it, but we know that may well be an unsustainable position in some respects.

697. The way in which we put our offer the last time was, "Withdraw the Bill and we'll negotiate." I am not sure that we put it quite as strongly as that, but that is our preference. Our concern is that, if the Bill were adopted, any negotiations that might take place would not be real. If the negotiations did not result in a resolution, it would always be within the remit or power of the Committee, Minister or whoever to come back and say, "Right, they have been messing about; they haven't been serious in their negotiations. The Bill is going to go through as was proposed." We would prefer that scenario to —

698. **Mr Mitchel McLaughlin**: The argument that we are getting is that it is an expensive scheme and that it gets more expensive every day. That is what we are up against. They will not agree to postpone it, taste it to see and maybe revisit it.

699. **Mr Campfield**: That contradicts what we are being told. We were looking information on non-departmental public bodies. We are being told that there have not been any compulsory or voluntary redundancies in the Civil Service. There are no plans for them, so that has not cost anything yet. If they have confidence in how things are projected over the next two or three years, we can maintain the position that there will be no need to have recourse to the redundancy provisions in a big way. Therefore, the cost argument falls.

700. When we express concern about a diminution of people's entitlements, the case has been made to us that it does not look like there will be any major redundancies on the horizon. We would like to think that is the case; we hope that is the case. If that is case, where will the savings take place? No great number of people will go out through the redundancy provisions. There is an inconsistency in the argument that these are very costly. The objective is to try to avoid redundancy, particularly compulsory redundancies. You will find that, the better the terms of a voluntary redundancy scheme, the more likely you are to avoid the necessity to have recourse to compulsory redundancies. Certainly, as a trade union, we do not like to see any jobs go, but the voluntary redundancy situation is the lesser of two evils when compared with the compulsory redundancy situation.

701. We are not convinced that maintaining the current compensation arrangements will result in any significant additional cost to Northern Ireland. The objective is to avoid redundancies, and we are told that there are no redundancies on the horizon.

702. **Mr Mitchel McLaughlin**: There are no compulsory redundancies.

703. **Mr Campfield**: Or voluntary.

704. **Mr Mitchel McLaughlin**: Well, there is, but perhaps not in this specific case.

705. We have to try to find a way through this if we can. The teacher redundancy negotiation resulted in quite a good and generous package. It is a regional arrangement. There is no legal requirement to agree; the package was just attractive enough for people to sign up to what I think is a very generous package that the Executive negotiated and approved. That is an example of how this can be made to work. I am not inviting you to comment or trying to catch you on this, but I strongly suggest that you look at that. I am sure that your colleagues in the teaching unions will discuss it with you.

706. **Mr Campfield**: I imagine that is one of the issues that we would look at or use for comparative purposes if we were involved in negotiations. It is a matter of getting to the negotiation stage.

707. **Mr Mitchel McLaughlin**: I formally suggest that you get their point of view. I am of the same view as you; we would like to get there.

708. **Mr Harry Baird (FDA)**: I will comment on Mitchel's points. What we have been trying to say may not be clear, but costs are the cornerstone of the argument. Parity with GB is a principle but it is not there in every aspect. When it suits the Minister or Department, it is gone. That is because it is viewed in those cases as different. In other words, if the Minister makes the case, which he has, that something such as pay is different, he goes ahead and implements that without discussion etc. So, there is a precedent for that approach when costs etc come into play.

709. We are really saying — and it is another cornerstone of the argument — that the position here is different from GB. When the UK Civil Service expanded, we did not. It is now cutting back; there may be 25% cuts. Therefore, your points about the cost is a crucial one in GB, and one can, perhaps, see why that was pushed through. The FDA was involved in those negotiations in GB. In one sense, it did not agree them but in another it was agreed because of the threat that worse would come. It is a bit like the recent agreement on pensions: we have not really agreed that, but, as a union, we voted to accept the Government's proposals because worse would have been coming.

710. As Brian said, the big difference between here and GB is that we are being told at the moment that we should not expect wholesale redundancies, either voluntary or compulsory, and that the Department has so far been successful in all its austerity measures. There has been none. Brian talked about an area close to me — planning — where we have successfully avoided redundancies, yet surplus staff there have been moved around other Departments etc. That can work. So, those are the two cornerstones, and that is why, in a crude sense, the Bill takes the veto away from the trade unions and gives it to the Department. Is that fair?

711. **Mr Mitchel McLaughlin**: I would not say that it is fair but it is the way of the world.

712. **Mr Baird**: That is essentially what is happening. It may be that there should be no veto for anyone.

713. **Mr Campfield**: Now that I have the information, I want to pick up on the earlier question about when this was raised with the Department. Paragraph 5.2 of the minutes of the 15 May meeting of the pension forum state that trade union side advised it was invited to give evidence to the Committee again on 4 July. It goes on to say that trade union side told management side that it was available to consult on the proposed amendments. Paragraph 5.3 states that management side explained that the remit was to maintain parity with GB, and, therefore, to align the principal Civil Service pension scheme in Northern Ireland with the equivalent GB scheme. That scheme had been amended in 2010 and is the driver behind the Superannuation Bill and not plans for redundancies.

714. Grace will no doubt —

715. **Mr Humphrey**: That is different, Brian, because you said that the Minister wanted it. I specifically noted that. You said that the Minister wanted it, and I think what that is saying is that the Minister is concerned about breaking parity, which is somewhat different.

716. **Mr Campfield**: What I meant was that it was the Minister's view that parity should be applied. That was the remit that departmental officials seem to have been given. Therefore, the Minister's decision that parity should be strictly applied in this case made it difficult, if not impossible, for them to enter into any meaningful consultation or negotiations. I was not saying that the Minister wants people to have less redundancy compensation. It was not meant in that sense. My understanding is that the Minister wanted to maintain the strict parity approach, even if that meant a diminution of people's entitlements. I hope that I did not imply that the Minister was relishing reducing the redundancy provisions for staff. For his own reasons, he took a decision that the GB arrangements should apply in

Northern Ireland. That is the remit that staff were working to and what makes negotiations or proper consultation difficult.

717. **Mr Humphrey**: I am grateful for that clarification. Let me make it very clear: no one in our party is keen on or wants to implement Tory cuts. They come from on high in London, and there is a huge cost to Northern Ireland that has been explained in the Chamber time after time by Ministers. The cost of breaking parity to Northern Ireland, not just in this but across the piece, would be huge. There is not enough money in the block grant to do that, and cuts have to be found elsewhere. I am not talking about pensions. Nobody in the DUP wants to implement Tory austerity measures.

718. **Mr Campfield**: I certainly was not implying that the Minister is an enthusiast for any of this. However, I have to make an observation: parity is as difficult an issue for us as it is for you. I do not want to introduce a note of controversy, but when we see the consensus and the unanimity that there appears to be in the Assembly for a departure from parity on corporation tax, it raises questions in our minds about whether you want to have your cake and eat it. Those were the terms in which it was put to us earlier. If parity was strictly applied, it raises the issue of whether there is a point in having an Assembly in the first place. I know that there are arguments about devolutionists and integrationists, but having a different rate of corporation tax is a departure from parity, is it not?

719. **Mr McQuillan**: You mentioned a hole earlier; I think you are digging it now.

720. **The Chairperson**: Brian, I am keen to move things on. Paul, you are next.

721. **Mr Girvan**: Thank you very much. I welcome you to the Chair and thank the witnesses for coming to the Committee this morning. I want to come in on the point about having your cake and eating it. It is fine to have parity in one way, but we want to cherry-pick the parts that are good and discard the parts that are not. That seems to be what is coming across this morning. We do not want to create a problem for those who would voluntarily or compulsorily receive redundancy payments. We also want to ensure that those who will be in receipt of pensions get as much as possible. However, how do we fund that?

722. Consultation took place with the unions at a senior level at Westminster on this matter for GB, and agreement was reached. Some of the unions at those discussions represented unions that are sitting here this morning, and their views would have been included. If we were to break parity on that point, we would effectively be saying that we should treat the people in Northern Ireland differently, and that they should get more than those in the rest of the United Kingdom. That creates a problem for me. I am opposed to the implementation of regional pay, and the Minister is on record as saying that he wants to make sure that the Civil Service pay scales stay the same. That has to be supported. If we are going to do that — we are keen that that be the case — we need to look at why we should break parity and allow a change to be made to how we deal with superannuation. If we do that, how will we fund it? Ultimately, as soon as we do it, we will remove that amount from a certain sector of our block grant. As Mitchel and William pointed out, we have to be very careful about how we deal with this.

723. I believe that we are effectively consulting you this morning, on the basis that we are here to hear your evidence on this point. That is what is happening, and we are dealing with it. Cuts will and have to be made in the Civil Service. There are reductions, whether those be classed as efficiencies, or whatever. We all face budget cuts and, therefore, have to make accommodations, whatever those might be. I can tell you that Members are having to make cuts as well, because we face a reduction of up to 9% in our office cost allowance (OCA). That will impact on our employees over the next three years and will mean that they will have to accept a reduction in the number of days or hours that they

work in order to meet the constraints being placed on us. We know what it is like to have to work to a budget. I am just wondering how we deal with this. We support you on the regional pay issue. We think that it is vital that we do that. However, we cannot accept that one aspect; we cannot say that we do want to accept it because of the negative impact that it will have on the Civil Service. We do not want to implement any cuts, but, unfortunately, that argument will be very difficult for us to overcome.

724. **Mr Lynn**: Before Brian comes in, I want to make this clear: we do have regional pay in the Northern Ireland Civil Service. We negotiate our own pay in Northern Ireland. In fact, we have just completed a comprehensive pay and grading review of the Northern Ireland Civil Service. That is currently with the Minister, and we are awaiting a formal offer. As far as pay in the Northern Ireland Civil Service is concerned, parity does not exist, and it has not for a number of years.

725. **Mr Mitchel McLaughlin**: With the exception of the Senior Civil Service.

726. **Mr Lynn**: It can deal with that itself.

727. **Mr Mitchel McLaughlin**: It can definitely look after itself.

728. **Mr Lynn**: We do have regional pay in the Northern Ireland Civil Service.

729. **Mr Campfield**: I will pick up on some of the points. I think that Billy is right: we deliberately do not categorise it as regional pay because people would then say that we have regional pay that is related to the local market, which is a more difficult form of regional pay.

730. The Chancellor was talking not just about regional pay in his proposal but about — I think that this is the phrase he used — market-facing pay. If market-facing pay were to be introduced in Northern Ireland and in certain regions of Britain, it would be a race to the bottom with wages. We are very appreciative of the Finance Minister's very clear opposition to the introduction of George Osborne's market-facing regional pay. Having said that, I believe that the pay of Northern Ireland Civil Servants is different from the pay of Civil Servants in other Departments in Britain, as it is from one Department to another in Britain. In that sense, we do not see a variation in the compensation scheme arrangements as being fundamentally different from the variation in our pay situation. A negotiated outcome in Northern Ireland to the compensation scheme arrangements, which may be different from the overall UK position, would be, in our view, consistent with the way in which pay is negotiated separately in Northern Ireland. We do not see any difference there.

731. You said that if we do something different with the compensation scheme, the Northern Ireland block grant will be hit. I am not sure that that is the case. If compensation scheme payments for redundancies were to come out of existing budgets, of course, you would have to pay for that. It is not something that Treasury would pay. However, that is what you have to do now under the current rules. I know that there may be some technical issues related to computerisation and software, and there may be some costs there. However, from my reading of the situation — I could be wrong on this, and no doubt the departmental representatives will contradict me if I am — each Department or the Civil Service will pay the costs of the redundancy. It is not something that will require a Treasury adjustment should we happen to get more.

732. **Mr Girvan**: I will come back to you on that point. Say that, for the sake of argument, we decided that we wanted to pay an extra £10 a week to those on unemployment benefit. That would have to be funded by us.

733. **Mr Campfield**: I appreciate that that would.

734. **Mr Girvan**: For argument's sake, if people say to us that their 40-year redundancy payment should be £70,000 on a £40,000 salary, or whatever that may be on a final salary system. I am working on the basis that, should we decide that

we want to give them £78,000, that extra £8,000 has to be found. It will not come from Whitehall. That will come from Northern Ireland's block grant and what there is to be spent in Northern Ireland on hospitals, roads, schools, and so on. That is exactly where we will be.

735. **Mr Campfield**: The point is that we are not asking you to get any more money. We are asking you to apply the current rules. We are prepared to negotiate, but we are saying —

736. **Mr Girvan**: Those rules exist now. However, once the Bill is implemented in GB, do you think that Treasury will sit back and say that you will get the same amount of money? It will recalculate —

737. **Mr Campfield**: I may be wrong, and no doubt Grace and her colleagues will contradict me or put me right by clarifying matters. We are talking here about the Superannuation Bill and the redundancy compensation scheme for civil servants. The costs of applying the current rules come out of the Northern Ireland block. It would not be a question of the Treasury making an adjustment. Take your benefits example: because benefits come out of annually managed expenditure (AME) and are not part of the Northern Ireland block, the Treasury will make an adjustment. It will not give you the money to meet the £10 extra that you hypothetically propose to pay. Therefore, there is a difference. Benefits come out of AME, whereas the cost of compensation comes out of the block grant.

738. Of course, if you maintain the current arrangements, you will still have to pay for it. However, taken to its logical conclusion, by saying that we should reduce, one could be accused of saying, "Look, if we cut the wages of all public servants by half in Northern Ireland, there will be much more money available for public services, and we will be able to do this, that and the other." All that we are saying is that redundancies are not pleasant situations — I am sure that people here have been there. Therefore, the best possible terms should be made available.

739. We have variations in pay between the Civil Service here and in Britain. There is nothing inconsistent in having a variation in our redundancy compensation arrangements, and we are prepared to sit down and negotiate with the Department. By negotiate, I do not mean to follow slavishly what there is in GB, and we recognise that we would probably not be able to convince the Department to maintain the status quo. That is where negotiations come in. It is a double-edged sword for us. Once we offer to negotiate, we are in the business, as someone said earlier, of having to negotiate the best possible deal, which may be less than what we have at the moment. That is the way of the world, is it not?

740. **Mr Cree**: Good morning gentlemen. I must disagree with Brian on corporation tax. That is a different ball game and a game-changer for the economy. However, it is a job for another place.

741. On the matter in hand, it is totally wrong for either side to have a veto, because that inhibits negotiations. However, the Bill is simple. In March, when we last met, Brian, I asked about compensation, and you could not quantify it. You now say that no redundancies are on the horizon. Nevertheless, it is important that we somehow quantify just what the effects will be on civil servants. If this is going to be long term, it could have a very serious knock-on effect on any argument. It would almost become academic. We need to have some handle on how it will impact on civil servants. Can you give us any idea of that?

742. **Mr Campfield**: I think that you asked us previously about providing figures. The Department provided examples, and those are the sorts of examples that we have as well. Yes, it would have a negative impact. We do not know whether redundancies are coming down the road. We are being told that they are not on the horizon, but you can never tell what is around the corner.

743. People are concerned about the various potential costs. However, we are saying there is no necessity to make the

changes. We are back to our initial negotiating position: why would you do it? As things stand, maintaining the current position will not result in major costs. They would be minimal. If we move into a situation in which there will be big reductions, and redundancy costs will escalate because of that, it is within your remit to revisit the issue and say that changes need to be made. If we, having made the offer of negotiations, were not behaving ourselves or conducting ourselves in a reasonable way in those negotiations, you would quite legitimately be able to come to the conclusion that we are messing about, and, as such, you will implement the Superannuation Bill. You still have the options; you are not closing them off completely. We do not see the necessity for that, however, given the scenario that we see in front of us.

744. **Mr Cree**: It is really like shadow boxing.

745. **Mr Baird**: We have talked about reductions. Nobody is saying that there are not reductions. Every Department is reducing. Posts are going day and daily, but there are not redundancies. There is a difference. Yes, we are being cut back. The Department can give the figures later, but there is no argument about the 3,000 or 4,000 posts. That is happening, but there is not voluntary or compulsory redundancy. One hopes that that is a short- to medium-term measure and that we are talking about a few years. In that sense, we argue that there is no need for this to come in at the moment. There is probably no budget for redundancy at the minute, because it is not expected to happen. If it does happen, Departments will be expected to pay for that, which may mean other reductions. I do not think that you will find that there is a crock of gold at the minute to pay for redundancy in the block grant, the Vote on Account or anywhere.

746. **Mr Cree**: We will not have those anyway, so we are still shadow boxing.

747. **Mr Baird**: Exactly.

748. **Mr Campfield**: If it is shadow boxing, let us have a shadow Bill. Let it disappear.

749. **Mr Cree**: We could have the Bill with the date of application in it deferred.

750. **Mr Beggs**: Good morning. Thanks for coming along, presenting to us and taking our questions. I want to pursue a little bit more the issue of whether we have regional pay. The Executive have been trying to maintain regional pay because of the fear that the block will be cut accordingly and Northern Ireland will be worse off. However, you said that there is not regional pay in the Civil Service. Can you explain that? My understanding, from all the figures that have been given to us, is that typical Civil Service pay is around 30% higher than there is in the private sector. Can you clarify how that has happened if there is not regional pay?

751. **Mr Campfield**: We sent a research publication earlier this year to every MLA. It was a blue A5 document that was called 'A Trojan Horse for Regional Pay: the misuse of "pay gap" data'. The publication deals with the way in which the differences in pay data between the public sector and private sector are used by certain people to secure their own agenda of attacking public services and reducing public sector pay. That covers the issue of regional pay. We do not have regional pay in the broadest sense. For instance, health service workers' pay is negotiated in London. There are no regional rates of pay, but the Treasury and the Department of Health in Britain recently made a submission to the NHS Pay Review Body (PRB) suggesting that, instead of introducing regional rates of pay by having separate systems, the national Agenda for Change rates of pay be frozen, suppressed or kept to a minimum. They also suggested that, in areas where there are pressures on recruitment and retention in particular trusts or foundation hospitals, the only increases would be in those specific areas. Their way of achieving regional pay is by superficially, on the one hand, keeping the facade of national pay rates flat and, on the other, allowing places

such as the south-east of England or London to increase its rates of pay.

752. That has implications for us in Northern Ireland because, if the national rates of pay in the health service are frozen for the next lot of years to achieve a form of regional pay in Britain, we will have that as well. There is a big issue there. We are going to discuss that with the Finance Minister later in the month.

753. In local government, pay rates for local councils, education and library boards, Housing Executive offices and libraries are determined by reference to the National Joint Council for Local Government Services in Britain, so we have national pay rates there. In the health service, we have Agenda for Change and, in the local authorities, we have the national UK local authority rates. It is a bit different in the Civil Service because of the delegation on pay matters to individual Departments. The Northern Ireland Civil Service was treated as an individual Department for the purposes of Margaret Thatcher's Government, and disparities then developed between the pay of the Northern Ireland Civil Service — in the way in which that pay was determined, pay rates and grading structures — and that in, say, the Ministry of Agriculture, Fisheries and Food (MAFF), as it used to be, and Transport and Environment Departments, and so on.

754. Every UK Civil Service Department and the Northern Ireland Civil Service have different pay and grading structures, and therefore their rates of pay vary. You can compare the rates, and some work has been done by the Northern Ireland Statistics and Research Agency (NISRA) in doing so across UK Civil Service departments, including the Northern Ireland Civil Service, so, in that sense, we do have regional pay. We have a regionally negotiated pay, but we do not have what would be termed regional pay in the sense that the pay rates relate to those in the private sector. The Finance Minister is well aware of that, and one of the reasons that he is very strongly opposed to regional pay is because the dominant element in the Northern Ireland economy is small- and medium-sized enterprises.

755. We do not have the big corporations like Edinburgh, where there are big finance houses and big investment companies. We do not have the critical mass of those big companies in the private sector to bring the average public sector wage up. Therefore, if we had regional market-facing pay, there would be a race to the bottom. That would have a big impact not just on public servants but on the high street, because people would not have money to spend, and so on. You find that people who are in the lower and middle income brackets spend the bulk of their pay in the economy, because they have to in order to live. Therefore, money that is being taken away from public servants as a result of the regional pay element is not going into the economy, into the local shops or even into the high street, because you are talking about shops in local areas.

756. We have a regionally negotiated pay in the Civil Service here — just the Civil Service — but it is not regional pay in the sense that people understand that to mean.

757. **Mr Beggs**: That is helpful. On the veto that exists in the trade union movement, are you aware of any other group of workers that have an absolute veto?

758. **Mr Campfield**: I am not sure that there is in legislation. The Superannuation (Northern Ireland) Order dates back to 1972. Society normally develops in a progressive way, with people making advances. For 40 years from the early 1970s, the terms and conditions of employment and workers' rights have been under constant attack. Their provisions are being diminished and diluted. I know that the argument is that the economy cannot afford it, and all that, but those are broader arguments on which we are happy to engage with anybody.

759. This may be a bad example for this forum, but London tube drivers have a veto, do they not? Their veto is based

on their being quite prepared to close down tube trains. Our members would not generally take the same approach. Tube drivers have that leverage and can vote with their feet if Transport London, Richard Branson or somebody attacks their terms and conditions. Civil servants work on behalf of government, and they do so objectively, independently and fairly. The Superannuation Bill was designed to recognise that and to take all these things out of the political arena in order to have a stable basis for compensating people for redundancy. I think that that is why the veto was there for civil servants in particular.

760. **Mr Beggs**: I fully understand that you are arguing to protect your members' existing interests. However, do you understand that if better superannuation conditions than those in the rest of the UK are maintained here, the extra money to maintain those conditions will come out of the block grant? Some public services will suffer because the money will not be available to address issues — should they be health or education — that need to be addressed.

761. **Mr Campfield**: First, let me make the point that a commitment to there being no redundancies would leave no need for redundancy costs. Secondly, as I mentioned, were we to have redundancies now, they would be paid for from the block grant. We are not asking for anything more than we have at the moment. We are not asking for a further hit on the block grant as a result of maintaining the current arrangements. It is being proposed that the block grant be effectively enhanced, even marginally, by reducing the redundancy compensation provisions.

762. The argument can be turned around to say that workers who are being made redundant are helping to fund the block grant and public services, because they are taking the hit through losing their job. They are getting less compensation than they otherwise would. Therefore, they are forgoing compensation so that the money can be used on health and education services. I know that that is not what you said, but that is how to turn the argument around and look at the issue in another way. If workers are to be made redundant for less provision than there is at the moment, they are, in a sense, paying to maintain whatever else the money is to be used for. It is a bit unfair to make workers who are made redundant suffer in that way.

763. **The Chairperson**: Brian, thank you very much for your presentation. This engagement has been very useful. If there are further developments that you want to keep us abreast of, do not hesitate to contact the Committee.

764. **Mr Mitchel McLaughlin**: If it follows the time frames, there should be no resistance to codifying them. Let us put them in there.

765. **The Committee Clerk**: There are two final points to make. If members are satisfied with DFP assurances and responses to the equality impact —

766. **Mr McQuillan**: Can I ask why, if you do follow those guidelines, they are not included?

767. **Mrs G Nesbitt**: It is just standard practice.

768. **Mr McQuillan**: It is just taken as read?

769. **Mrs G Nesbitt**: Yes. It is done.

770. **Mr Beggs**: I know that, on occasion in the past, from looking at amendments to other legislation, if it is already covered somewhere else, officials do not tend to want it included a second time in another piece of legislation. Can we have some feedback from RaISe on that issue?

771. **Mrs G Nesbitt**: I think that that might be helpful, because it is standard practice.

772. **The Committee Clerk**: Finally, on the equality and human rights issues, are members content with the assurances?

Members indicated assent.

773. **The Chairperson**: Grace, thank you very much. I thank Committee members for their patience. Grace, I would appreciate if you could send the other information that we asked for over the summer period. We can then consider that before we finalise our report.

774. **Mrs G Nesbitt**: There is another evidence session on Wednesday 5 September, at which I will go through the Bill clause by clause, which I did not get to do today. I propose to send the Committee something in writing on that. I think that it might be helpful for members to have that in advance of that meeting. It will be quite short, so it may save your some time.

775. **The Chairperson**: Thank you very much.

5 September 2012

Members present for all or part of the proceedings:

Mr Daithí McKay (Chairperson)
Mr Dominic Bradley (Deputy Chairperson)
Mr Roy Beggs
Mrs Judith Cochrane
Mr Leslie Cree
Mr Paul Girvan
Mr David Hilditch
Mr Mitchel McLaughlin

Witnesses:

Ms Margaret Coyle	*Department of Finance*
Ms Margaret Miskelly	*and Personnel*
Mrs Grace Nesbitt	

776. **The Chairperson**: I welcome to the Committee officials from the Department of Finance and Personnel (DFP) — Grace Nesbitt, Margaret Coyle and Margaret Miskelly. Do the witnesses want to make an opening statement on follow-up correspondence with the Department since the meeting on 4 July?

777. **Mrs Grace Nesbitt (Department of Finance and Personnel)**: No. We are quite happy to deal with any queries that you have.

778. **The Chairperson**: OK. Members, does anyone want to kick off? Paul, you are looking at me.

779. **Mr Girvan**: It is OK. I will wait until someone else opens it.

780. Maybe I will kick off. My question is around the words "consultation" and "negotiation". What impact do you think that will have on the draft Bill?

781. **Mrs G Nesbitt**: As I said in the follow-up submission to the Committee after the last evidence session, "consultation" remains the appropriate term. "Negotiation" is used in the context of pay. "Consultation" is the term that is used in pension legislation and is the appropriate term for us to continue to use. It is the term that is used throughout public sector pension legislation. That remains the view of departmental officials.

782. **Mr D Bradley**: Is it the Department's intention to maintain parity on these issues?

783. **Mrs G Nesbitt**: Which specific issue, Mr Bradley? Is it the Superannuation Order?

784. **Mr D Bradley**: Yes. This is really about reducing the amount of compensation, is it not?

785. **Mrs G Nesbitt**: The matter that we are considering is a change to the Superannuation Order. With the Chair's agreement, I will give a little bit of context. The reason why we are making the change to the Superannuation Order is to bring us into line with changes that were first introduced by the Labour Government in GB. Changes were introduced through the Superannuation Act 2010 to allow the compensation scheme to be changed. Those changes to the compensation scheme relate to what people get paid when they leave work on a voluntary basis or through compulsory redundancy. I assume that is the change that you are talking about?

786. **Mr D Bradley**: Yes.

787. **Mrs G Nesbitt**: The overall intention behind that is to maintain parity with GB.

788. **Mr D Bradley**: In that case, can we really have meaningful consultation?

789. **Mrs G Nesbitt**: The terms of reference have been supplied to the Committee. I think that I sent those previously. We agreed the terms of reference with the unions at a pension forum. The term that is used in those specific terms of reference, which has been agreed and signed off by various trade unions that were represented, is "consultation". That is the term that has been agreed with and recognised by trade union side. We will endeavour to consult the trade

union side, which is the other side, if you like, and it understands the context in which we operate and is familiar with it. We have agreed on the next stage, which is to deal with a change to the Superannuation Order, and which is, I accept, a detrimental change for the majority of people who may, at some point, have to leave work through redundancy. We have agreed with the unions that we will look at the proposals that they come up with, and we will consider them. However, that will be within the overall context of parity. If we can agree something, I have said to the unions that we will look at it. We have engaged with the unions on that, and we have agreed with them that we will look at that.

790. **Mr D Bradley**: There is an inherent contradiction in what you are saying. On the one hand, you are saying that your aim is to maintain parity and, on the other hand, you will, presumably, consider some differences.

791. **Mrs G Nesbitt**: At this point, we do not have parity with GB, so you could say that, yes, that is a contradiction. The changes in GB were introduced in December 2010. The union has already made it clear that there may be issues with the timing of the introduction of this change, and that may be something that we would want to consider with other changes that are happening in the public sector. At our last meeting, the union made the point about changes that may occur with the review of public administration and suggested that we may want to consider the timing of the introduction. Although we may keep parity overall with regard to the substance of the change, there may be issues about the timing of its introduction, and those matters could be ironed out in the consultation process.

792. **Mr D Bradley**: So there might be a few nuances here and there?

793. **Mrs G Nesbitt**: There may be nuances with the timing, and when we get into the detail of it, there may also be particular nuances with the substance.

794. **Mr D Bradley**: What is the Department's interpretation of the phrase:

"with a view to reaching agreement with the persons consulted."

795. in clause 2(2)? Does that mean that you will encourage them to accept your point of view or that you will be open to make changes in accordance with their point of view?

796. **Mrs G Nesbitt**: Without wishing to sound contradictory, it means both. Consultation is not a telling process. In my experience over many years, consultation is a listening process. When we go into a consultation process, we go in to listen to what the other side has to say. From my experience, the other side — the trade union side — is also interested in first hearing what management side is proposing and then, hopefully, agreeing a meeting of minds. That has been my experience. Yes, you are obviously trying to persuade those on the other side to your point of view, but you are also trying to listen to their side.

797. **Mr D Bradley**: Very dangerously close to negotiation there.

798. **The Chairperson**: Grace, just before I move on to Leslie, the Department sent a response to us on 21 March stating that it would be possible to amend the Bill so that any changes to the compensation scheme would be subject to procedure in the Assembly. That could be seen as a fairly minimal and reasonable amendment to the Bill that would recognise the overall Assembly view. Do you agree with that or have you any comment on that?

799. **Mrs G Nesbitt**: The question was asked whether that could happen, and as I said at the previous session and in my latest note to you in July, that could happen. It would not be the Department's intention to do that. That response indicated that, factually, yes, that could happen.

800. **Mr Mitchel McLaughlin**: You would consult with the Committee with a view to reaching agreement.

801. **Mrs G Nesbitt**: Would that be 12 weeks or eight weeks?

802. **Mr Mitchel McLaughlin**: As long as it takes.

803. **Mr Cree**: I was intrigued by your answers to Dominic. You handled it very well. It reminded me of a cricket match. However, to put it more succinctly, is the Department prepared to consider any change in substance to the Bill, bearing in mind that there is only one item in the Bill? Are you going to insist on direct parity?

804. **Mrs G Nesbitt**: I want to make it clear that, at this point, we are talking about the Superannuation Bill. From the Department's perspective, I do not see any need to change any aspect of the Bill. What Mr Bradley was dealing with is the next stage. The change that we are making to the Superannuation Bill is being done so that we can make what is termed a detrimental change to the compensation scheme. There are two different issues. The view of the Department and officials is that, in the contents and substance of the Superannuation Bill, what has been presented represents something that is appropriate and necessary.

805. **Mr Cree**: So there would be no compromise on that?

806. **Mrs G Nesbitt**: There are four clauses in the Bill, although it really boils down to two. Perhaps I might elaborate. One removes the union veto, which, obviously, the union is keen to keep. Members may have a view on that. The view of officials is that it is reasonable to remove the union veto; ours is the only pension scheme that has a union veto. With the removal of the union veto, a safeguard is put in place to say that a report will be produced in which officials will have to demonstrate how meaningful the consultation has been and to show that they have tried to reach agreement with the unions. That, in my experience, is unusual; in fact, it is unique. In my experience and to my knowledge —

807. **Mr Cree**: It is pretty unusual then, is it not, if it is unique?

808. **Mrs G Nesbitt**: To my knowledge, it is. I do not know of any other case in which a report has to be produced to record a consultation process with the unions. I do not want to say categorically, because there may be something in the mists. However, in my experience of dealing with the unions, I am not aware of anywhere else that a report of that nature is required to be produced. I should also add that, for any other detrimental change, the union veto stays in place; this is just removing the union veto as regards the compensation scheme. Officials and I are content with the content and substance of the changes proposed to the Superannuation Order and will not be proposing any amendments.

809. **Mr Cree**: If I can, I will sum that up in my humble terms. You are saying that, because of the necessity for parity within the United Kingdom, it should all be the same. Therefore, on the substantive issue, there is no compromise.

810. **Mrs G Nesbitt**: There is no compromise on the detail of the Superannuation Order. Where there may be compromise, and where there will be a process of consultation, is on the timing of how and when we give effect to the changes for the compensation scheme, which could, if you like, be termed stage 2. There may be nuances, as I said in response to your colleague, to the actual substance of the compensation scheme. However, those are both "mays", because we have not really got into the detail.

811. The changes that we propose to the Superannuation Order are reasonable and appropriate. Those changes were brought about because of cases that I have highlighted to the Committee before. When the coalition Government tried to make the changes, they tried to secure the agreement of the unions. From memory, they got the agreement of four out of five of the main unions. The Government — I cannot remember whether it was the coalition or Labour Government — were then challenged and lost the challenge. The decision was then made that they had to change

the primary legislation, because the unions would not agree to a detrimental change. Therefore, we need to make that change to our primary legislation to enable us to have scope to change the compensation scheme; otherwise, we will not be able to.

812. **Mr Cree**: Thank you. I think that I understand it clearly now.

813. **Mrs G Nesbitt**: Good. I am sorry if that was a bit repetitive.

814. **Mr Cree**: It was just for clarification.

815. **Mr Mitchel McLaughlin**: Everything has been pretty well dealt with, but I have one wee pedantic point. When you refer to the consultation in the context of the Bill, it means, at all times and circumstances, consultation with a view to reaching agreement.

816. **Mrs G Nesbitt**: Yes.

817. **Mr Mitchel McLaughlin**: Just a wee bit of shorthand creeps in; I am being a suspicious person.

818. **The Chairperson**: You are getting off very lightly today, Grace.

819. Before you go, we have, this morning, considered amendments from the Committee that we will forward to you for comment. Would it be possible to get written comment on those before Friday, so that we can make a decision on them for next week's Committee meeting?

820. **Mrs G Nesbitt**: I was going to say, "This Friday?" Can we not have 12 weeks? *[Laughter.]* I would like clarity on the level of written comment that you want. We have already commented, in the previous meeting, on the level of written comment that you wanted. I am loath to use the terms "yes" or "no"; do you want reasons why we do or do not accept the amendments?

821. **The Chairperson**: Yes. I would like reasons and rationale. There are only three amendments.

822. **Mr D Bradley**: Consultation aimed at reaching agreement.

823. **Mr Beggs**: For clarification, the Committee has not agreed these amendments, as I understand it. They are going to you for comment.

824. **Mr Cree**: It will help with our decision-making.

825. **The Chairperson**: We would like any rationale or concerns that you have about them.

826. **Mrs G Nesbitt**: With a view to getting my agreement. *[Laughter.]* When will I get the amendments?

827. **The Committee Clerk**: You will get them this afternoon.

828. **Mrs G Nesbitt**: If I do not get the response to you by Friday, I will certainly endeavour to get it to you sometime on Monday. I am a little bit hesitant because I have an industrial tribunal to prepare for, potentially. I will know later today whether that is running. I will certainly get it to you by Monday at the latest. Is that acceptable?

829. **The Chairperson**: Friday would be more acceptable.

830. **The Committee Clerk**: The members' packs go out at around lunchtime on Monday, so that would be the cut-off point.

831. **Mrs G Nesbitt**: OK. I will definitely get it out to you by lunchtime on Monday. It would be helpful to have the weekend if I need it. That would be appreciated.

832. **The Chairperson**: That is great; thank you very much.

12 September 2012

Members present for all or part of the proceedings:

Mr Daithí McKay (Chairperson)
Mr Dominic Bradley (Deputy Chairperson)
Mr Roy Beggs
Mrs Judith Cochrane
Mr Leslie Cree
Mr Paul Girvan
Mr David Hilditch
Mr William Humphrey
Mr Mitchel McLaughlin

833. **The Chairperson**: We come to our formal clause-by-clause scrutiny of the Superannuation Bill. I will ask the Committee Clerk to go through the options for us.

Clause 1 (Consents required for civil service compensation scheme modifications)

834. **The Committee Clerk**: I will just recap for members: clause 1 removes the requirement in article 4 of the Superannuation (NI) Order 1972 to obtain the consent of the Civil Service trades unions for reductions in benefits provided under the Civil Service compensation scheme. Members will be aware that it has been referred to as the trade union veto. In their evidence to the Committee, the unions raised concerns about the proposed removal, and the Northern Ireland Human Rights Commission advised the Committee that removing the trade union veto may risk regression in the protection of a number of human rights. The Department disputed that, and maintained that the removal of the veto is necessary to maintain parity with GB; the Department gave an assurance that it will undertake effective consultation. No amendments to clause 1 have been considered by the Committee. Therefore the question is whether the Committee is content with clause 1.

Clause 1 agreed to.

Clause 2 (Consultation in relation to civil service compensation scheme modifications)

835. **The Committee Clerk**: Two of the amendments discussed in the previous session, which we titled A and C, affect clause 2 directly; amendment B, which concerns Assembly control, is also relevant to our scrutiny of clause 2. Without going back over issues that we discussed in the previous session, members need to decide formally which, if any, of the following amendments the Committee wishes to propose. Any amendments that the Committee agrees will go into the Committee's report to the Assembly as amendments to be tabled at Consideration Stage.

836. Amendment No 1 is the "Duty to Negotiate". If I read the Committee right, there seemed to be consensus in opposing the amendment.

Members indicated assent.

Clause 2 agreed to.

837. **The Committee Clerk**: Amendment No 2 is "Strengthening the Reporting Duty". Amendment No 2 could be made in addition to amendment No 3 concerning Assembly control.

838. **The Chairperson**: Since the consensus seems to be that amendment No 3 has some support, perhaps we should take it first.

839. **The Committee Clerk**: The question is whether the Committee is content to propose amendment No 3, which will insert a new clause 3 into the Bill, to the Assembly. If members agree to amendment No 3, the question is whether it should be subject to negative or affirmative resolution.

840. **The Chairperson**: Do members agree that amendment No 3 — that new clause 3 be inserted into the Bill subject to negative resolution — be made?

Question put, That the amendment be made.

The Committee divided:

Ayes 7; Noes 3.

AYES

Mr Beggs, Mr Cree, Mr D Bradley, Mr McKay, Mr Mitchel McLaughlin, Mrs Cochrane, Ms Fearon.

NOES

Mr Girvan, Mr Hilditch, Mr Humphrey.

Question accordingly agreed to.

841. **The Committee Clerk**: The question is whether the Committee is content with amendment No 2, "Strengthening the Reporting Duty".

842. **The Chairperson**: I was picking up, given that amendment No 3 has been agreed, that there is no need for amendment No 2.

Members indicated assent.

Clause 3 (Interpretation)

843. **The Committee Clerk**: There were no issues raised in the evidence sessions on clause 3. Is the Committee content with the clause?

Clause 3 agreed to.

Clause 4 (Short title and commencement)

844. **The Committee Clerk**: No issues were raised in the evidence sessions, so the question is whether the Committee is content with clause 4.

Clause 4 agreed to.

845. **The Committee Clerk**: The long title of the Bill is: A Bill to make provision for and in connection with limiting the value of the benefits which may be provided under so much of any scheme under Article 3 of the Superannuation (Northern Ireland) Order 1972 as provides by virtue of Article 4(2) of that Order for benefits to be provided by way of compensation to or in respect of persons who suffer loss of office or employment; and to make provision about the procedure for modifying such a scheme.

Long title agreed to.

846. **The Committee Clerk**: An initial draft of the Committee's report will be prepared for next week's meeting, summarising the evidence and reflecting the decisions taken today. There will be a final draft for consideration at the meeting on 26 September in time for the Committee to agree the report to the Assembly before the Committee Stage expires on 28 September. Consideration Stage is expected to take place in the week commencing 22 October, in advance of which any agreed Committee amendments will be required to be tabled. The Bill Office will be able to advise whether any consequential amendments need to be made.

847. **The Chairperson**: That concludes our clause-by-clause scrutiny of the Bill.

848. **Mr Girvan**: Before we move on, Chairman, was there not a major discussion last week on what was deemed the period for consultation? Did we agree to remove the word "minimum"?

849. **The Committee Clerk**: The member had just left the meeting when it was agreed that that amendment would no longer be considered.

850. **Mr Girvan**: Ok; that is fine.

Appendix 3

Memoranda and Papers from the Department of Finance and Personnel

Superannuation Bill 2011

From: Norman Irwin

Date: 7 June 2011
To: Shane McAteer
Re: Evidence Session – 15 June 2011

Summary

Business Area : Corporate HR.
Issue: Proposed Superannuation Bill 2011.
Restrictions: None.
Action Required: To note.

Background

1. The Committee has requested that Corporate HR officials attend the meeting on 15 June 2011 to provide information on the proposed Superannuation Bill 2011. The Committee has not been briefed before on this issue.

Key Issues

2. DFP has authority to make and maintain pension and compensation schemes for Northern Ireland civil servants under Article 3 of the Superannuation (Northern Ireland) Order 1972. The main schemes for civil servants made under the Superannuation (Northern Ireland) Order 1972 are the Principal Civil Service Pension Scheme (Northern Ireland) and the Civil Service Compensation Scheme (Northern Ireland). The Superannuation (Northern Ireland) Order 1972 requires that the Department shall engage in consultation with trade unions representing civil servants on any proposed changes to these schemes. Under Article 4 of the 1972 Order, the Department is also required to secure the consent of the trade unions representing civil servants for any detrimental change which would have the effect of reducing the level of benefits payable under these schemes. The Northern Ireland Civil Service (NICS) compensation scheme determines the levels of compensation paid to members who are made voluntarily or compulsorily redundant. It should be noted that in addition to NICS staff, a number of other public bodies are also members of the Scheme, including Invest NI, NI Museum Council, Office of the Chief Electoral Officer and Civilian Recruits to the PSNI.

3. The NICS pension and compensation schemes operate on the basis of parity with the equivalent schemes in the Home Civil Service, which are made and maintained by the Cabinet Office under the provisions of the Superannuation Act 1972 which is the GB equivalent to the Superannuation (Northern Ireland) Order 1972. Although public service pension policy is a transferred matter it has been a matter of practice for many decades that the schemes for civil servants in Northern Ireland have been virtually identical to their equivalents in GB. Failure to maintain parity in this instance would result in civil servants in Northern Ireland who are made voluntarily or compulsorily redundant receiving higher compensation payments than GB civil servants who leave in similar circumstances, which may exert additional pressures on public expenditure in Northern Ireland. Cash payments in the NICS compensation scheme are determined with reference to both length of service and age of the individual. Under the current provisions payments are generally limited to a maximum of 3 years' pay. A new compensation scheme for the Home Civil Service was introduced on 22 December 2010 and the maximum payable is limited to 21 months' pay for voluntary redundancy and 12 months' pay for compulsory redundancy. These terms are considerably less generous than those currently available to Northern Ireland civil servants.

4. The Minister for the Cabinet Office, Francis Maude, introduced a Superannuation Bill in the House of Commons on 15 July 2010 to amend the provisions of the Superannuation Act 1972. This Bill received Royal Assent on 16 December 2010 and is now an Act of Parliament. The Act amends the Superannuation Act 1972 to remove the requirement in that Act for trade union consent to detrimental changes1 to the compensation scheme. The Act also included provisions to cap the amount of compensation payable to civil servants in GB to 12 months pensionable pay on compulsory redundancy and 15 months pensionable pay on voluntary redundancy. The capping provisions were subsequently withdrawn following the introduction of a new civil service compensation scheme in GB.

5. The Superannuation Act in GB was developed against the backdrop of protracted negotiations between Cabinet Office and Home Civil Service trade unions aimed at reaching agreement on a new compensation scheme for the Home Civil Service. Cabinet Office had previously introduced a new compensation scheme for the Home Civil Service in February 2010. The Public and Commercial Service (PCS) Union is the largest Home Civil Service union and is supported by the Northern Ireland Public Service Alliance (NIPSA) in Northern Ireland. PCS opposed the terms of the new scheme and mounted a legal challenge against its implementation without union consent as was required by the Superannuation Act 1972. The legal challenge was successful and the new scheme was quashed by the High Court in May 2010.

6. On that occasion the Minister for Finance and Personnel determined it appropriate to delay the introduction of an equivalent compensation scheme for the NICS pending the outcome of the PCS legal challenge. The prevailing rationale in this instance was that had the PCS legal challenge failed an equivalent scheme could be introduced for the NICS relatively swiftly by way of a scheme amendment, which is made in secondary legislation and not subject to parliamentary procedure in the NI Assembly. The powers conferred by the Superannuation (Northern Ireland) Order 1972 enable the Department of Finance and Personnel to amend pension and compensation schemes for staff in the NICS without the need to do so through primary legislation. The position in GB is identical in that powers conferred by the Superannuation Act 1972 enable the Minister for the Civil Service in GB to make, maintain and administer pension and compensation schemes for staff in the Home Civil Service by secondary legislation.

7. Subsequent to the amendment to the Superannuation Act 1972 removing the need for union consent to detrimental changes to the compensation scheme, Cabinet Office introduced a new compensation scheme for the Home Civil Service with effect from 22 December 2010. On 21 March 2011 the PCS announced that, in conjunction with the Prison Officers Association, it had launched fresh legal action against the imposition of the new scheme. The unions are seeking a Judicial Review on the basis that the manner in which the scheme has been implemented to cut benefits which are based on civil servants' accrued service is in breach of the European Convention on Human Rights. A date for a hearing in the High Court has yet to be set.

8. If the result of the latest legal challenge is unsuccessful and the new compensation scheme for the Home Civil Service stands, the Department of Finance and Personnel will at present be unable to implement an equivalent, less generous, scheme for the NICS without the consent of the NICS trade unions as is currently required under Article 4 (3) of the Superannuation (Northern Ireland) Order 1972. However, should the PCS legal challenge succeed it is likely that Cabinet Office will reintroduce provisions in the Superannuation Act 2010 to cap the amount of compensation payments to 12 months pensionable earnings in the case of compulsory redundancy and 15 months pensionable earnings in the case of voluntary redundancy. These provisions were initially included in the Superannuation Act 2010 and subsequently repealed when the new compensation scheme was introduced. If the Cabinet Office did reintroduce the limits on the amount of compensation benefits payable there would be a requirement to also amend the proposed Superannuation Bill accordingly to maintain parity, but it is not necessary to do so at this time.

1 Detrimental changes is the terminology used in the explanatory notes to the GB Superannuation Act 2010.

Next Steps

9. In summary there are three possible scenarios which may arise and each requires a different course of action. The three scenarios are as follow:

   I. The position in GB remains as at present and the legal challenge to the new GB compensation scheme is unsuccessful. In these circumstances the Superannuation (Northern Ireland) Order 1972 would be amended by primary legislation through the proposed Superannuation Bill to remove the need for union consent to reduce compensation payments. This amendment will also insert new requirements for the Department of Finance and Personnel to make an official report to the NI Assembly on the consultations that has taken place with trade unions prior to any detrimental change being made to the Civil Service Compensation Scheme (Northern Ireland) The report will be required to include details of the consultation that took place, the steps taken in connection with that consultation with a view to reaching agreement in with the trade unions, and finally, whether such agreement has been reached. The Civil Service Compensation Scheme (Northern Ireland) can then be amended accordingly by secondary legislation which takes the form of a scheme amendment.

   II. The PCS union is successful in its legal challenge to the terms of the new compensation scheme in GB during the course of the passage of the proposed Superannuation Bill in the Assembly, and the Cabinet Office decides to reinsert the capping provisions in the Superannuation Act 2010. – In these circumstances we would arrange to table an amendment to the proposed Superannuation Bill to insert similar capping provisions in addition to amending the Superannuation (Northern Ireland) Order 1972 to remove the need for union consent to reduce compensation payments. There would be no need for secondary legislation in this instance.

   III. The proposed Northern Ireland Superannuation Bill becomes law and the Superannuation (Northern Ireland) Order 1972 is amended to remove the need for union consent to reduce compensation payments. The PCS and POA are successful in their legal challenge and the Cabinet Office subsequently reinstates the capping provisions in the Superannuation Act 2010. – In these circumstances new legislation would be required to insert similar capping provisions in the proposed Superannuation Bill 2011 after it has become law and an Order of the NI Assembly.

10. The Minister has issued a paper to his Executive colleagues. The paper is scheduled for discussion on 16 June 2011.

    Norman Irwin

CFP13 11-15 - Superannuation Bill Response

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Mr Shane McAteer
Clerk
Committee for Finance and Personnel
Room 419
Parliament Buildings
Stormont

Our Ref: CFP13/11-15

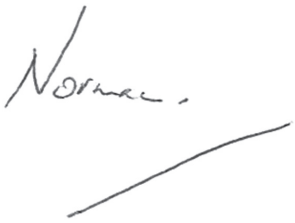
27 June 2011

Dear Shane,

Proposed Superannuation Bill

Following the recent update provided by officials from Civil Service Pensions, the Committee sought further information. This is now attached.

Yours sincerely,



NORMAN IRWIN

The Proposed Superannuation Bill

1. Introduction

Following the Committee's evidence session on 15th June on the above Bill, additional information was requested by members. This information is now provided.

2. The impact of proposed changes.

The table at **Annex 1** provides a summary of the changes to Compensation Scheme. It contains details of the current exit terms which exist at present in the N Ireland Compensation Scheme and the proposed terms which are the terms that pertain under the current GB scheme.

3. Clarification on whether the purpose is to modernise a system to reflect economic reality or simply a cost-saving measure.

The reform of the Compensation Scheme in GB began under the previous Labour government. This reform was driven by a need to minimise the cost to the public purse, simplify the system and also to comply with age discrimination legislation. It should be noted that changes have already been introduced in the other public sector compensation schemes.

The Coalition Government has made it clear that the Civil Service must play its part in reducing the fiscal deficit. The Cabinet Office has stated that the changes in GB were introduced to ensure that any future compensation payments in the Home Civil Service affordable in the economic climate and sufficiently flexible to meet individual business needs.

The previous terms of the Compensation Scheme, (with some modifications) are those which were in place since 1987. These terms generally provided a service and age-related payment for people aged under 50, and enhanced early retirement packages for people aged between 50 and 60. The key elements are set out below, further details are provided in Annex 1.

- Compulsory exit terms - used in cases of redundancy, including volunteers in a pre-redundancy situation – the most generous.
- Severance payments for people under 50 calculated with reference to age and service, subject to a maximum of three years' pay.
- People aged 50 to 60 could receive an enhanced early retirement package (immediate payment of an unreduced pension, enhanced by up to 6 years' added service).

Some aspects of the compensation terms which had been in place since 1987 were considered to be "age discriminatory" as different benefits were payable depending on age. Furthermore, the Minister for the Cabinet Office under the Coalition Government, Francis Maude MP, stated in July 2010 "In light of the extremely difficult fiscal circumstances facing the national economy, the Government has no option but to take steps to ensure that any scheme for civil servants is affordable in the economic climate."

4. Information on the previous legal challenge and outcome.

The Public and Commercial Services (PCS) Union applied for judicial review of the decision to introduce changes to the CSCS in GB that were detrimental to existing civil and public servants, without the agreement of the union representing the majority of civil servants. On 11 May 2010, the High Court ruled in favour of the PCS and said the amendments to the

CSCS should be quashed. Mr Justice Sales pointed to section 2(3) of the Superannuation Act 1972 (as amended), which says:

> *"No scheme under the said section 1 shall make any provision which would have the effect of reducing the amount of any pension, allowance or gratuity, in so far as that amount is directly or indirectly referable to rights which have accrued (whether by virtue of service rendered, contributions paid or any other thing done) before the coming into operation of the scheme, unless the persons consulted in accordance with section 1 (3) of the Act have agreed to the inclusion of that provision."*

He rejected the argument made by the Cabinet Office that the protection conferred by section 2(3) applied to benefits under the Principal Civil Service Pension Scheme (PCSPS) but not to the Civil Service Compensation Scheme;

> *"In my judgment the phrase "rights which have accrued" uses the words "rights" and "accrued" in the same natural, non-technical sense in which they were used in paragraph 12 of the Joint Committee report. In the context of the PCSPS as it stood down to 1994 and now in the context of the PCSPS and CSCS, those entitlements which existed as a matter of administrative practice (albeit not as a matter of legal right) were nonetheless regarded by both staff and management sides as "accrued rights" in the sense relevant for the protection of section 2(3) to apply. The position down to 1972, according to which benefits which were a matter of legal form discretionary were nonetheless treated in substance as entitlements and were in fact always paid, had continued without a break up to the amendment of the law in 1990. Moreover the language in the PCSPS in relation to such discretionary benefits was the language of entitlement and right. Thus, on the natural reading of section 2 (3) in its particular context and against the background of the Joint Committee report, I consider that the phrase "rights which have accrued" was apt to cover both those pension and other rights which were a matter of legal entitlement and also other "rights" to benefits which were in substance a matter of administrative entitlement"*

This meant the terms governing the amount of those Civil Service Compensation Scheme benefits referable to length of service and contributions paid, could not be altered without the consent of the trade unions consulted:

> *"In light of the interpretation of section 2 (3) of the 1972 Act as amended set out above, therefore, those benefits under the CSCS in relation to redundancy, compulsory early retirement and the like, which are defined by reference to length of service or contributions paid, all attract the protection of section 2 (3). The Claimant's agreement is required before the terms governing the amount of those benefits may be altered."*

The Court ruled that consideration would need to be given to how far the effects of the judgment should extend:

> *"For these reasons, the Claimant's application for judicial review succeeds and the amended CSCS falls to be quashed. Consideration will now need to be given to what any quashing order should say and how far the effects of this judgment extend. The parties should consider the terms of the order which they propose should be made in the light of this judgment. Any outstanding area of dispute in relation to the terms of the order can be referred back to the court for determination."*

The Cabinet Office said it was "disappointed by the High Court's decision" and was "considering the terms of the judgement." The PCS hailed it as a "major victory".

A copy of Mr Justice Sales' full judgement is provided at **Annex 2.**

5. Details of grounds for the legal challenge.

Subsequent to the amendment to the Superannuation Act 1972 removing the need for union consent to detrimental changes to the Civil Service Compensation Scheme (CSCS) in GB, Cabinet Office introduced a new scheme for the Home Civil Service with effect from 22 December 2010.
On 21 March 2011 the Public and Commercial Services (PCS) Union announced that, in conjunction with the Prison Officers Association (POA), it has launched fresh legal action against the imposition of the new scheme. The unions are seeking a Judicial Review on the basis that the manner in which the scheme has been implemented to cut benefits which are based on civil servants' accrued service is in breach of the European Convention on Human Rights. A date for a hearing in the High Court has yet to be set.

Human rights and legality of the Bill's provisions

The relevant legislation is contained in Article 1, Protocol 1 of the European Convention on Human Rights. A point of disagreement exists between the Coalition Government and the Unions on the extent to which Compensation Scheme benefits are protected under human rights legislation.

The Minister for the Cabinet Office has stated, pursuant to section 19(1) (a) of the Human Rights Act 1998, that in his view the Bill is compatible with the Convention rights. The Coalition Government considers that the limits in clause 1 are not an interference with the right to possessions protected by Article 1 of Protocol 1 (A1P1) to the European Convention on Human Rights. A1P1 provides that everyone 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. The Coalition Government also considers that first, payments under the Compensation Scheme are not considered to be "possessions" within A1P1. Second, those limits only apply where notice of compulsory severance is given, or voluntary severance agreed, after clause 1 comes into force. So there is no deprivation of or interference with existing possessions (if any).

Article 1 of Protocol 1 (A1P1) to the European Convention on Human Rights reads as follows:

> *"Every natural or legal person is entitled to the peaceful enjoyment of his possessions. 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.*

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

6. Assessment of other options considered, in addition to the option of maintaining parity, including associated costs / benefits.

The information at **Annex 3** provides the detail of the actual terms of the current Compensation Scheme in NI and the GB scheme.

The Northern Ireland Civil Service pension and compensation schemes have always operated on the basis of parity with the equivalent schemes in the Home Civil Service. The GB schemes are made and maintained by the Cabinet Office under the provisions of the Superannuation Act 1972 which is the GB equivalent to the Superannuation (Northern Ireland) Order 1972. Although public service pension policy is a transferred matter it has been a matter of practice for many decades that the pension scheme for civil servants in Northern Ireland has been virtually identical to its equivalent in GB. The Northern Ireland Civil Service Compensation Scheme and the equivalent Home Civil Service both determine the levels of compensation paid to civil servants who are made voluntarily or compulsorily

redundant. Cash payments in the Northern Ireland Compensation Scheme are determined with reference to both length of service and age of the individual. Under the current provisions payments are generally limited to a maximum of 3 years' pay. A new Compensation Scheme for the Home Civil Service was introduced on 22 December 2010 and the maximum payable is limited to 21 months' pay for voluntary redundancy and 12 months' pay for compulsory redundancy. These terms are considerably less generous than those currently available to Northern Ireland Civil Servants. Failure to maintain parity in this instance would result in civil servants in Northern Ireland who are made redundant continuing to receive higher compensation payments than GB civil servants who leave in similar circumstances which may also exert additional pressures on public expenditure in Northern Ireland.

Parity with GB has provided a number of benefits over the decades, including a central forum for negotiations with the Trades Unions and consistency of approach across the public sector. It has enabled the costs of administration to be controlled as parity provides for a source of primary legislation and also secondary legislation from GB in the form of Scheme Amendments; associated communication booklets, leaflets etc for staff and employers notices; legal advice and policy guidance; and common IT systems maintained at minimal cost. A break with parity would result in the above benefits being lost.

A break from parity would require careful consideration on two key aspects in terms of the costs and benefits. Firstly, is the policy intent to provide for a very different Compensation Scheme from that in place in GB – and if so will it be more or less generous than the current N Ireland Scheme and at what consequence to the public purse; and, secondly assuming benefits are reduced under the Compensation Scheme in N Ireland, will this reduction justify the extra costs incurred in breaking the link and establishing our own stand alone IT systems and all of the above for a different N Ireland Compensation Scheme?

7. Examples / scenarios of cost differences between current position and proposed changes.

Detail on the existing terms of the Compensation Scheme is provided at **Annex 3** along with a number of worked examples at **Annex 3A** which provide a comparison of benefits under the current N Ireland Compensation Scheme and the GB Scheme. Information on the comparison between the current N I scheme and proposed Compensation Scheme in also contained in the table at **Annex 4**.

8. Number of staff in each of the four pension schemes currently in operation and details of differences between the schemes, including costs to members.

The PCSPS (NI) is the pension scheme for Northern Ireland Civil Servants. Employees of related bodies which are listed at Schedule 1 to the Superannuation (Northern Ireland) Order 1972 are also eligible for membership. The PCSPS (NI) is an unfunded scheme administered by the Department of Finance and Personnel and provides final salary or career average arrangements for members depending on their date of entry to the scheme.

Depending on which arrangement the PCSPS (NI) member belongs to they pay contributions at either 1.5% or 3.5% of pensionable pay. Membership accrual and contribution rate arrangements within the PCSPS (NI) are as follows:

- **Classic** (approximately 23,300 active members) – a final salary arrangement with a 1.5% member contributions which was closed to new joiners from 1 October 2002. Benefit accrual is 1/80th final pensionable earnings for each year of reckonable service plus an automatic lump sum of 3/80th final pensionable earnings. Members may increase their lump sum up to the maximum 25% of the capital value of their total pension entitlement by commuting pension.

- **Premium** (approximately 7,000 active members) – a final salary arrangement with a 3.5% member contribution and closed to new joiners from 30 July 2007. Benefit accrual is 1/60th final pensionable earnings for each year of reckonable service. There is no automatic lump sum but members may opt to commute pension for a lump sum of up to 25% of the capital value of their total pension entitlement.
- **Classic plus** (approximately 300 active members) – a final salary arrangement which is a hybrid of classic and premium and has 3.5% member contribution rate for service from 1 October 2002. classic plus is closed to new joiners from 30 July 2007. Members may increase their lump sum up to the maximum 25% of the capital value of their total pension entitlement by commuting pension.
- **Nuvos** (approximately 3,000 active members) – a career average arrangement with a 3.5% member contribution for new joiners from 30 July 2007. Benefits accrual is 2.3% of pensionable earnings per scheme year. There is no automatic lump sum but members may opt to commute pension for a lump sum of up to 25% of the capital value of their total pension entitlement.

Benefits are uprated annually in line with the percentage increase applied to additional state pensions. Members of classic, classic plus and premium have a normal pension age of 60. The maximum service which may reckon for pension purposes is 45 years.

The normal pension age for nuvos is 65. There is no limit on reckonable service but the nuvos pension cannot exceed 75% of final pay. PCSPS (NI) members who would qualify for preserved benefits in the scheme can receive ill-health retirement pension early (two–tier system). A PCSPS (NI) member can increase their pension entitlement by buying extra pension in the scheme. The PCSPS (NI) provides that accrued pension rights are transferable to and from other schemes.

PCSPS (NI) employers pay a salary related superannuation charge as set out below. These are known as Accruing Superannuation Liability Charges (ASLCs).

	Annual full time equivalent pensionable salary 2011/12	**Employer's ASLC Charge**
Salary Band	**£ per annum**	**% of salary**
1	Up to £23,099	18%
2	£23,100 to £46,899	20%
3	£46,900 to £100,999	23.5%
4	£101,000 and over	25%

The appropriate rate for Prison Officers appointed before 4 September 1989 who retain reserved rights will be 26% with effect from 1 April 2010.

Membership of the PCSPS (NI) is as follows:

- 33,600 current employees, known as "active members" who are contributing to the scheme
- 8,500 former employees, known as "deferred members" – these are people who have left and are yet to draw their pension
- 20,000 pensioner members
- 5,300 dependents in receipt of a pension

The PCSPS (NI) paid approximately £179 million in pension benefits and £53 million in lump sum payments during the 2010/11 financial year. The rules of the PCSPS (NI) contain

provisions for cost capping and the sharing of future increases in scheme costs between employers and employees.

Partnership Pension Account

As an alternative to joining the PCSPS (NI) staff may choose to open a Partnership pension account. Partnership is a stakeholder pension with employer contributions. This is a type of personal pension. Staff do not have to make any payments to have a partnership pension account as the employer will make contributions anyway. If the member does choose to contribute, the employer will match payments up to a further 3% of pensionable salary.

These contributions are invested by the chosen provider. Over the years, the pension fund should grow with investment returns (the money earned by the investments), and the resulting 'pot' is used to either buy a pension when they retire or to leave to someone on their death.

The employer will pay a monthly contribution into the partnership pension account depending on the members' age and salary. If the member does contribute the employer will match any regular contributions made (up to 3% of pensionable salary) and the fund will grow faster giving a bigger 'pot' to buy a pension when they choose.

They will also be able to take up to 25% of this 'pot' as a tax-free lump sum at any age from 55 even if they are still working.

If they leave the NICS they can take this pension with them, it is theirs for life. In addition, opening a partnership pension account also gives access to other PCSPS (NI) benefits. If they are unable to work through ill health, a lump sum may be payable, or if they were to die in service, a lump sum would be payable to their dependants. The PCSPS (NI) has chosen three partnership pension providers: Standard Life, Scottish Widows and TUC (Prudential).

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ANNEX 4 **Principal Civil Service Pension Scheme (Northern Ireland), [PCSPS(NI)]**

Annex 1

Current And Proposed Terms For Compensation Scheme

Current Exit Terms			Proposed Terms
Compulsory Redundancy Terms	**Early Retirement** **> 50 with min of 5 years service**	**Early Severance - (Standard terms)** **< 50 (or > 50 with < 5 years)**	**Compulsory Redundancy Terms**
These terms are intended to be used when an individual's contract is being terminated compulsorily (eg on redundancy but also for "structural" departures of senior staff).	Immediate payment of pensions & associated lump sum without reduction for early payment. Pensionable service enhanced by up to 6 2/3 years* plus a lump sum compensation payment of the greater of (a) 6 months pay & (b) statutory redundancy which is reduced by 1/36th for each month the person is aged > 57. Under the new proposals the current terms will be modified to remove the tapering which currently applies to the compensation lump sum paid to those between 57 & 60 (backdated to 16 July 2008) & a full 6 months compensation lump sum will be paid to those > 60 (backdated to 1 April 2009.	1 months pay per year of service plus 1 months pay per year of service after the alter of (a) 5 years service and (b) age 30 plus 1 months pay per year of service after age 35. Subject to a maximum of 3 years pay. Early Severance (1987 terms – apply to staff in mobile grade @ 1/4/87) < 40 on departure – as standard terms but not capped. Aged between 40 & 50 on departure - standard terms topped to the capital value of the early retirement package under pre-1987 terms. Cost can exceed 6 years pay.	Employer must offer Voluntary Redundancy Terms before moving to Compulsory Terms 2 Year qualifying service condition Compensation payment of 1 months pay for each year of service - subject to a maximum of 12 months pay for those under pension age. Tapering will apply – Maximum compensation will be limited to number of months to pension age plus 6 months. Employees earning less than £23,000 per annum will be deemed to be earning that amount for the purposes of calculating the compensation payment. Employees earning more than £149,820 per annum will be deemed to be earning that amount when calculating the compensation payment. The lower and higher deemed earnings will not apply to calculation of pension benefits.

Current Exit Terms			Proposed Terms
			Redundancy payments will be capped @ a maximum of 6 months pay for those > pension age. Immediate access to pension. Members may opt for the Employer to use their compensation payment to buy-out the actuarial reduction, which would otherwise apply, to members who are over age 50 (55 if joined scheme on or after 6 April 2006). Employers will not meet any buy out costs due in excess of the compensation amount but members may buy out the short-fall – otherwise must take compensation payment and draw pension on reduced basis or leave pension preserved to pension age. Employers have no Flexibility to vary Compulsory Redundancy Terms.
Voluntary Redundancy Terms Employers must offer Voluntary Terms prior to moving to Compulsory	**As for compulsory above.**	**As for compulsory above.**	**Voluntary Redundancy Terms** 2 Year qualifying service condition – although Employers can waive the qualifying period or reduce it. Compensation payment of 1 months pay for each year of service – subject to maximum of 21 months for those under pension age. Tapering will apply – Maximum compensation will be limited to number of months to pension age plus 6 months.

Current Exit Terms			Proposed Terms
			Employees earning less than £23,000 per annum will be deemed to be earning that amount for the purposes of calculating the compensation payment. Employees earning more than £149,820 per annum will be deemed to be earning that amount when calculating the compensation payment. The lower and higher deemed earnings will not apply to calculation of pension benefits. Employers must offer early payment of pension to those aged 50 (55 if member joined after 6 April 2006) or over & chose to fund part or all of the cost of buying out the actuarial reduction from their compensation payment. If compensation payment is insufficient to meet the cost of buy out, then the Employer must fund the difference. If there is residual compensation payment after buy out the member will be paid the balance. Redundancy payments will be capped @ a maximum of 6 months pay for those > pension age. Immediate access to pension.

Current Exit Terms			Proposed Terms
Flexible Retirement/ Severance Employers can invite individual applications to assist with Structural change.	**Early Retirement > 50 (& under pension age) with minimum of 5 years service** Immediate payment of pensions & associated lump sum without reduction for early payment. Pensionable service enhanced by up to 6 2/3 years*	**Early Severance Under 50 (or between 50 & 60 with < 5 years service).** Minimum of 12 months service required. 2 weeks pay per year of service during the 1st 5 years plus 3 weeks pay per year of service during years 5-10 plus 4 weeks pay per year of service after 10 years plus 2 weeks pay per year of service after reaching age 40. Subject to a maximum of 2 years pay.	**Voluntary Exit Terms** 2 Year qualifying service condition – although Employers can waive the qualifying period or reduce it. Compensation payment of 1 months pay for each year of service – subject to maximum of 21 months for those under pension age. Tapering will apply – Maximum compensation will be compared to number of months to pension age plus 6 months. Employees earning more than £149,820 per annum will be deemed to be earning that amount when calculating the compensation payment. Employer flexibilities: • Employer can offer compensation payment of up to twice the standard tariff up to overall limit of 21 months, subject to approval of Department of Finance and Personnel. • The minimum an Employer can offer is equal to the amount due under statutory redundancy terms. • Employers may, where the member earns less than £23,000, deem the member to be receiving that amount for purposes of calculating the compensation payment only.

			• Employers can offer to top up the compensation payment on current service for those who have reached minimum retirement age (50, or 55 where member joined service on or after 6 April 2006) and wish to take their pension benefits early without reduction.
Approved Early Retirement Members over age 55 with more than 25 years service may apply to leave on these terms, subject to Employer agreement/ funding of costs until pension age. Otherwise Employers can invite individual applications to assist with Structural Change or limited postability	**> 50 (age 55 for new entrants from April 2006) with minimum of 5 years service** Immediate payment of pension & associated lump sum without reduction for early payment.	**N/A**	**Voluntary Exit Terms** As for voluntary exit terms set out above.

PCSU Judgement

Annex 2

Neutral Citation Number: [2010] EWHC 1027 (Admin)

Case No: CO/2777/2010

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 10/05/2010

Before :

THE HONOURABLE MR JUSTICE SALES

- -

Between :

The Queen (on the application of the Public and Commercial Services Union)	**Claimant**
- and -	
Minister for the Civil Service	**Defendant**

- -
- -

Mr Nigel Giffin QC & Mr Nicholas Randall (instructed by **Thompsons Solicitors**) for the **Claimant**
Ms Elisabeth Laing QC & Mr Clive Sheldon (instructed by **the Treasury Solicitor**) for the **Defendant**

Hearing dates: 22/4/10 – 23/4/10

- -

Approved Judgment

Mr Justice Sales :

Introduction

1. This is an application for judicial review of the introduction by the Defendant of amendments to the Civil Service Compensation Scheme. The Minister designated as the Minister for the Civil Service at present is the Prime Minister. I will refer to the scheme as it was in existence prior to the introduction of the amendments as "the CSCS" and to the scheme as now amended as "the amended CSCS".

2. The CSCS was made under section 1 of the Superannuation Act 1972 ("the 1972 Act") in 1994 and has been amended from time to time since then. The amendment provisions to create the amended CSCS were laid before Parliament by the Defendant on 5 February 2010 and purported to take effect with effect from 1 April 2010. The application came on before me as a rolled-up hearing for permission with detailed argument on the merits to follow. Having read into the case in advance of the hearing, I gave permission at the outset of the hearing for judicial review to proceed and heard full argument on the merits.

3. The purpose of the judicial review claim is to contest the lawfulness of amendments to the CSCS which have now been introduced. These have the effect of reducing in some cases the benefits to be received by civil servants who are made redundant, are compelled to take early retirement or are dismissed on grounds of structural reorganisation or in similar circumstances. The background to the introduction of the changes is the growing cost of pension provision as life expectation increases (since some of the benefits in question involve early payment of pensions), constraints upon the public finances in current circumstances and a desire on the part of the Government to reduce the costs of redundancy through restructuring of government departments and so forth.

4. The Claimant is a trade union representing large numbers of civil servants. It objects to the introduction of the changes to the CSCS. The Claimant maintains that the amendments to the CSCS deprive its members of what it says are accrued rights in respect of redundancy and other payments which might have to be made to them if certain contingencies occur - e.g. if they are made redundant or are compelled to take early retirement - and that by virtue of section 2(3) of the 1972 Act its consent is required before such changes could validly be brought into effect. It has not consented to the changes.

5. In the alternative, the Claimant submits that it had a legitimate expectation that its consent would be sought and obtained before the introduction of such changes to the CSCS, which legitimate expectation has been defeated by the Defendant without proper justification.

6. The CSCS contains many complicated, detailed provisions setting out various payments and pensions which may become payable in certain circumstances to civil servants. It was not necessary for the purposes of this application for me to be taken through the detail of all these benefits. The benefits may vary depending on when individuals became civil servants. Many of them are defined by reference to length of service or by reference to accrued pension entitlements, which in turn depend on the length of service or additional voluntary contributions which have been made by

employees. By way of example, it is helpful to set out the following passages from section 2 of the CSCS, which is headed "Compulsory and redundancy category (1972 Section Members)":

> "2.1 A civil servant who is compulsorily retired early on grounds of structure or limited efficiency, or retired early on grounds of redundancy, will receive the benefits as described in rules 2.2 to 2.9. ...
>
> *Early retirement for civil servants in post on or before 31 March 1997*
>
> 2.2 This rule applies where a civil servant:
>
> (a) was in post on or before 31 March 1997;
>
> (b) is retired early on or after 6 April 2006 under rule 2.1 above;
>
> (c) is aged 50 or over;
>
> (d) has five or more years' qualifying service;
>
> (e) has not opted out of the 1972 Section; and
>
> (f) has not opted in accordance with rule 2.4 to be treated under section 2A.
>
> The civil servant will be eligible for a pension and lump sum payable under the [Principal Civil Service Pension Scheme] in accordance with rule 3.11 of the 1972 Section, but with reckonable service increased by 6 2/3 years and the benefits being brought into payment immediately. ... If the civil servant's pension under rule 3.11 of the 1972 Section would have been higher if rule 1.6b of the 1972 Section were disregarded the civil servant will also be eligible for a lump sum compensation payment under rule 2.3a. ..."

7. In cases covered by rules 2.1 and 2.2, therefore, where compulsory early retirement is imposed on a civil servant who is aged 50 or over, his pension is brought into payment at the level to which his accrued pension entitlement entitles him on the basis of his years of reckonable service, without actuarial adjustment downwards and with the benefit of the notional increase of 6⅔ years of reckonable service. By contrast, where a civil servant elects to take early retirement at age 50 or over, he becomes entitled to early receipt of pension payments but actuarially reduced in amount on the grounds that the pension is being taken earlier than the normal retirement age.

8. In cases governed by rule 2.2 of the CSCS, both the amount of the pension which becomes payable and the amount of the lump sum payable are determined by reference to provisions in the Principal Civil Service Pension Scheme ("the PCSPS").

The amounts payable depend upon the years of reckonable service performed by the civil servant within the civil service and any additional voluntary contribution payments he has made to augment his entitlements under the PCSPS.

9. The effect of the changes in the amended CSCS will be to reduce the level of benefits available to some civil servants covered by rule 2.2 and other rules in the CSCS. The changes have been introduced as part of an overall package which produces increased benefits for some classes of worker but fewer benefits for others. The package has been accepted by five of the six trade unions who represent civil servants. However, the Claimant, which represents the largest number of civil servants, objects to the amendments on the grounds that a significant number of its members will be detrimentally affected by them.

The legal background to the Superannuation Act 1972

10. The position of civil servants at common law is that they are employed by the Crown at will and may be dismissed at any time without notice or other compensation: see Wade and Forsyth, *Administrative Law*, 9th ed., pp. 61-65. The harshness of that position has been significantly moderated by legislation, schemes made under legislation and administrative practice. In addition, in the 19th century pension provision for civil servants was introduced by legislation. The Superannuation Act 1834 ("the 1834 Act") and later Superannuation Acts included provisions which appeared to set out entitlements or rights of civil servants to receive pension when certain conditions were fulfilled: see, e.g., section 2 of the Superannuation Act 1859 ("the 1859 Act").

11. However, it was clearly established by authority that such entitlements did not constitute legal entitlements to payments. An important provision in that regard was section 30 of the 1834 Act, which stated:

> "Provided always, and be it further enacted, that nothing in this Act contained shall extend or be construed to extend to give any person an absolute right to compensation for past services, or to any superannuation or retiring allowance under this Act, or to deprive the Commissioners of His Majesty's Treasury, and the heads or principal officers of the respective departments, of their power and authority to dismiss any person from the public service without compensation."

This provision remained unrepealed in later Superannuation Acts and was consolidated in the Superannuation Act 1965 ("the 1965 Act") in section 79 of that Act, set out below.

12. The fullest discussion of the issue of entitlements for civil servants under these legislative provisions is in the judgment of the Court of Appeal in *Nixon v Attorney General* [1930] 1Ch 566. The case went on appeal to the House of Lords where, in a short decision, the Judicial Committee affirmed the judgments given in the Court of Appeal: see [1931] AC 184, especially at 190-191.

13. In the Court of Appeal in *Nixon* it was observed by Romer LJ that the 1834 Act was "one passed for the purpose of authorising the expenditure of public money and

defining the circumstances and manner in which it shall be expended and not one passed for the purpose of conferring rights upon any class of public servant" ([1930] 1Ch at 606); he went on to hold that that result was, in any event, achieved by section 30 of the 1834 Act. This meant that use of the word "entitled" meant no more than "entitled to expect" or "qualified to receive" (at pp. 606-607). Romer LJ dismissed the attempt by counsel for the civil servants in that case to draw a distinction between "right" and "absolute right", proposed by counsel in order to suggest some form of conditional legal "right" to a pension which, albeit not an "absolute" right, still existed as a right in law (at pp. 607 and 609). Lord Hanworth MR rejected the same argument and held that section 30 "destroyed the possibility of a claim of legal right" (at pp. 592 and 595). Lawrence LJ referred to authority which made the same point and came to the same conclusion (at pp. 599-603).

14. All members of the Court treated the speech of Lord Buckmaster LC in *Considine v McInerney* [1916] 2 AC 163 as authority against the proposition that the language of entitlement to superannuation allowances used at places in the 1834 Act and 1859 Act created a legal right to receive a pension (pp. 596-597 per Lord Hanworth MR, p. 601 per Lawrence LJ, and pp. 610-613 per Romer LJ). Lord Buckmaster emphasised that this was precluded by section 30 of the 1834 Act: see [1916] 2 AC at 169.

15. In *Nixon* in the House of Lords, Viscount Dunedin gave the leading speech. He approved the reasoning of the Court of Appeal and said this at [1931] AC 191:

> "My Lords, there is, first, the question of how the matter stands upon the statutes. The learned counsel had to admit that in quite the early days there obviously was no actual right in a servant of the King to have a pension, and he really pinned his faith to the Act of 1859 and the second section of it. It is impossible, of course, in that section to find positive words which direct that a pension must be granted; the phrase is: "Subject to the exceptions, the Superannuation Allowance to be granted after the commencement of this Act to persons who shall have served shall be," so-and-so. All through the Acts that follow there is a frequent use of the word "entitled", but "entitled", I take it, shows no more than entitled to such as the Acts give him. I cannot do better there than quote the phrase which Lord Buckmaster used in *Considine v. McInerney*, where, summing up the position, he says: "He was entitled to expect an annual allowance," and then he goes on, in the well known words that have been so often quoted, to say: "This expectation, though it might be relied on with full certainty, was none the less not a legal right, and no claim for it could be enforced by any legal proceedings." But the difficulty under that Act and the following Acts does not end there, because, in the first place, there is s. 30 of the Act of 1834, which was specially exempted from the repeal which was made of all other sections, and has to be read with all the Acts up to the present date. The only argument that was presented upon that was that s. 30 of the Act of 1834 says there is to be no absolute right. My Lords, to get out of a provision that you are not to have an

> absolute right a positive provision that you are to have a right, is an argument which has only to be stated to be rejected. ..."

16. In the Court of Appeal in *Nixon* at [1930] 1 Ch 607-608 Romer LJ commented as follows on the change to language apparently of entitlement in section 2 of the 1859 Act, which sat alongside a forfeiture provision in section 9 of that Act:

> "Why, it is asked, should this change of language occur in s. 2, and what was the necessity for this express power conferred by s. 9, if the Legislature intended the grant and the amount of the pension to be a matter of grace and not of right? I think that the explanation is as follows: The Commissioners of the Treasury in the exercise of the powers conferred upon them by the 1834 Act were, I strongly suspect, in the habit of always granting the maximum pensions allowable. When, therefore, the Legislature was passing the amending Act of 1859 for the purpose of apparently further defining the powers of the Commissioners, it might quite intelligibly have done so in the language employed in the Act, without intending to confer upon the civil servants a legal right to have the pensions awarded to them. It would, on the other hand, be very surprising if the Legislature when conferring such a right for the first time should have made so great a change in the law by such vague and ambiguous language. ..."

This is of some relevance to the arguments raised by the Claimant before me.

17. The position under the Superannuation Acts, therefore, as established by strong authority, was that they were to be regarded primarily as setting out a code detailing authorisation for payments to civil servants without creating any rights for the civil servants to receive such payments, and that the absence of any right for a civil servant to receive payment was the effect of the inclusion of section 30 of the 1834 Act in the statutory scheme, quite apart from other considerations. The language of the legislation, which appeared to be redolent of entitlements and rights for civil servants, fell to be read subject to these points and against the background of an absence of any rights against the Crown at common law to compensation or payment and did not create any such rights.

18. Section 7 of the 1859 Act provided that it should be lawful for the Treasury "to grant to any person retiring or removed from the public service in consequence of the abolition of his office, or for the purpose of facilitating improvements in the organisation of the department to which he belongs, by which greater efficiency and economy can be effected, such special annual allowance by way of compensation" as the Treasury consider "reasonable and just compensation for the loss of office". It was thus clear, both by the terms of section 7 and by the continued operation of section 30 of the 1834 Act, that a civil servant dismissed on grounds of what would now be termed redundancy or for reasons of structural reorganisation might be paid an allowance but had no enforceable right to such payment.

19. The Superannuation Acts were consolidated in the 1965 Act. In contrast to some of the provisions in the earlier legislation, the main substantive provisions of that Act providing for payment of pensions and compensation in certain circumstances were expressed in permissive rather than mandatory terms ("the Treasury may grant..." etc.).

20. Part I of the 1965 Act contained detailed provisions dealing with superannuation benefits. These included a provision which in substance re-enacted section 7 of the 1859 Act (section 8) and a provision (section 10) providing that an appropriate Minister could grant superannuation allowances (pensions) and additional allowances (lump sum payments) to civil servants aged 50 or more compelled to take premature retirement in the interests of efficiency. Section 11 of the 1965 Act provided for reduction of pensions and allowances on grounds of defaults or demerit in relation to public service. Part II of the 1965 Act contained special provisions relating to superannuation benefits for members of the diplomatic service. Section 30 of the 1834 Act was re-enacted as section 79 of the 1965 Act, as follows:

> "Nothing in this Act shall extend or be construed to extend to give any person an absolute right to any allowance or gratuity under Part I or Part II of this Act or to deprive the Treasury or the head or principal officer of any department of their or his power and authority to dismiss any person from the public service without compensation."

21. In light of the authorities referred to above, which had authoritatively explained the effect of section 30 of the 1834 Act, there can be no doubt that Parliament intended section 79 of the 1965 Act to have the same legal effect, namely to ensure that civil servants had no legal entitlement to receive nor any legal right with respect to the benefits referred to in the 1965 Act. Again, the object of the 1965 Act was to set out a statutory authorisation for making payments rather than to create entitlements for civil servants to receive payments.

22. The 1965 Act was supplemented by an administrative code known as "Estacode" which reflected negotiations between the management side and the staff side, represented by trade unions, under the Whitley Council system. Estacode set out detailed administrative provisions explaining, inter alia, how matters such as redundancy, compulsory early retirement on efficiency grounds and the like would be handled and the Act and Estacode set out what payments civil servants could expect to receive in such cases, both in terms of early payment of pension and lump sum payments.

23. Section M of Estacode dealt with the topic of superannuation and payments under the 1965 Act. Paragraph 2(a) of Estacode stated: "The following points should be noted: (a) there is no legal right to any allowance or gratuity (section 79 [of the 1965 Act])...". This spelled out in the administrative code the effect of section 79 of the 1965 Act. The legal effect of section 79 and the absence of any legal right to any allowance or gratuity (i.e. including any pension payments or lump sum payments) was clear to all concerned, both on the staff and management sides.

24. Notwithstanding the discretionary nature of such payments, for a long time before 1965 it appears that full payments of pensions and lump sums had in fact been made under the various legislative regimes and administrative codes: see the observations of Romer LJ in *Nixon v Attorney General* quoted at para. [16] above and of Lord Buckmaster LC in *Considine v McInerney* at [1916] 2 AC 170 (referring to the payment which a civil servant was "entitled to expect" and saying, "This expectation, though it might be relied on with full certainty, was nonetheless not a legal right, and no claim for it could be enforced by any proceedings"). This is unsurprising, since the Crown had an interest in attracting good quality civil servants into its service despite the absence of legal rights for them at common law and under statute, and the regular exercise of discretionary powers in their favour would be likely to encourage such service. The regularity of payment did not convert the 1965 Act and Estacode into a regime of entitlement, as the express reservation in section 79 of the 1965 Act and paragraph 2(a) in section M of Estacode made clear. In line with the earlier practice, it appears that the practice after 1965 remained that 1965 Act payments were always made and Whitley Council agreements incorporated into Estacode were also always honoured.

25. In the late 1960s/early 1970s the position of civil servants was subject to review by the Fulton Committee. In parallel with that review, the Joint Superannuation Committee of the National Whitley Council ("the Joint Committee") was set up in 1968 to review the provisions of the 1965 Act and associated legislation. The Joint Committee produced its report in February 1972 at a time when a new Superannuation Bill was before Parliament. The Joint Committee noted that improvements were necessary to the superannuation scheme "to restore to the civil service the position it had traditionally held as one of the leaders in pension practice". The Joint Committee's report was written with notice of the terms of the Superannuation Bill then before Parliament and was intended to inform the drafting of the Bill and the superannuation scheme later to be introduced under it (see paragraphs 10-12 of the report: it was noted that in the interest of flexibility and easy adaptability to new circumstances, the civil service pension scheme was to be removed from the statute book and replaced by pension terms set out in administrative documents promulgated by the Minister for the Civil Service).

26. The Joint Committee's report dealt with entitlement to benefit and forfeiture at paragraphs 91-95 as follows:

> "*Entitlement to benefit*
>
> 91. Hitherto, Civil Service pension benefits have always been discretionary. Section 79 of the Superannuation Act 1965 states that nothing in the Act shall be construed as giving any civil servant an absolute right to benefit. The Government are satisfied that they have never abused this power of discretion; nevertheless, the Committee feel that it is wrong that there should be such a power and that there is no good reason why civil servants should not have a legal entitlement to their pensions. In all the other public service schemes (except the armed forces), and in the great majority of private schemes, there is a legal right to benefit.

92. The Superannuation Bill is so framed as to make it possible for the new administrative scheme to specify benefits as mandatory. In the new scheme, there will be a right to benefits where this is to the advantage of the civil servant. This includes the main pension and lump sum, and widows' and dependants' pensions. But for tax reasons the following benefits will continue to be discretionary:

(i) the death gratuity and supplementary death gratuity;

(ii) the short service gratuity, unestablished gratuity and marriage gratuity;

(iii) all injury benefit payments;

(iv) all compensation (as opposed to pension) payments in the premature retirement terms.

Otherwise there will be an enforceable legal entitlement to the benefits of the scheme, except in the rare cases where the forfeiture rules may apply.

Forfeiture

93. The Committee agree that with the introduction of preservation, and the new role envisaged for pensions nationally, it would be inappropriate to continue the rules whereby Civil Service pensions can be forfeited or reduced in cases of misconduct and other circumstances. In particular, there will be no question in the future of dismissal from the Service automatically leading to forfeiture of pension rights. However, the Committee agree that there is a narrowly-defined range of circumstances in which pensions should be forfeited or withheld:

(i) Pensions will be automatically forfeited under the Forfeiture Act 1870 if the pensioner is convicted of treason (which normally happens only in wartime).

(ii) If a pensioner goes bankrupt, there will continue to be provision (under the Bankruptcy Acts) for the pension to be paid over in discharge of his liabilities.

(iii) Under Clause 5 of the Superannuation Bill, the pensioner will forfeit his pension if he assigns or tries to assign it.

(iv) Departments will have a limited power to impose a lien on pension benefits in respect of sums misappropriated or owed to them by the employee. That is, the Department will be able to reduce the

> pension or deferred pension by the actuarially appropriate amount if the pensioner is unwilling to repay the amount out of his own resources. If the pensioner disputes the liability, the Department will not be able to exercise the lien without first obtaining an order or judgment from a competent Court specifying the sum due.
>
> 94. In the vast majority of misconduct cases, forfeiture will not apply. But the Committee accept that the Government will reserve the right to impose forfeiture on the pensions of those guilty of particularly serious misconduct against the State e.g. a major security offence. But it should be emphasised that these cases will be extremely rare, and that when they occur two safeguards will apply. Firstly, the circumstances of each case will be discussed on a 'without prejudice' basis between the Staff and Official Sides before a decision is taken. Secondly, all staff will have a right to appeal to the Appeal Board (which is being set up in connection with the premature retirement arrangements) against a decision that a pension should be forfeited for misconduct. Moreover, the Department will accept the Appeal Board's judgment in such cases. This right of appeal will be available to those who have already left the Service when they forfeit their pensions, as well as to those who are still in service.
>
> 95. These forfeiture rules are necessarily subject to the provisions of the proposed national legislation on preservation of pension rights and on the conditions for exemption from the State Reserve Scheme. They will apply equally to deferred and full-term pensions."

27. The Joint Committee therefore recommended in clear terms that civil servants should have a legal entitlement to their pensions, but not to compensation (as opposed to pension) payments in the premature retirement terms. In my view, the reference in paragraph 92(iv) to "pension payments" in the premature retirement terms was to the entitlement to early payment of pension on enhanced terms which was to be a benefit in certain cases (as noted, e.g., in paragraph 48 of the report; see now rule 2.2 of the CSCS, set out above). Presumably pension payments, including one paid under those provisions, would be taxable income so there would be no tax advantage in leaving it as a discretionary benefit. Other compensation payments (i.e. lump sum payments) might be taxable and so were to be treated as discretionary in order to secure advantageous tax treatment. In view of the practice up to that point of paying such benefits, it is likely that the strong expectation was that they would in practice always continue to be paid, albeit that a discretion not to pay was to be reserved for the Crown.

28. The forfeiture provisions to be introduced were to be narrowed. According to the report, the main focus of the provisions was to be on payment of pensions. This tends

to support the interpretation of paragraphs 91 and 92 of the report as indicating an intention that payment of pensions (including cases where pensions were to be paid under the premature retirement terms) should be as of right, subject only to the detailed forfeiture provisions.

29. Section III of the Joint Committee's report dealt with preservation and transferability of pensions, noting that the object should be "to ensure that occupational pension rights are not lost when an employee leaves his employment before reaching the retirement age" (paragraph 22).

30. Paragraph 12 of the Joint Committee's report included the following:

> "12. The Staff Side have welcomed the Superannuation Bill, given the safeguards it contains. Firstly, the Bill lays a statutory obligation on the Minister for the Civil Service to consult staff interests before making changes. Secondly, there is a provision preventing him from worsening pensions in payment or pension rights already accrued unless the staff interests agree to it. Thirdly, the Bill allows the scheme to give a legal entitlement to pensions rather than to continue on the discretionary basis laid down in the Superannuation Acts. ..."

In my view, the reference to a legal entitlement to pensions as the third protection refers generally to all cases when pensions were to be payable under the new scheme, including cases of compulsory early retirement. That is also the natural inference to be drawn from paragraphs 91 and 92 of the report.

31. The first protection referred to in paragraph 12 of the report was the consultation obligation in what became section 1(3) of the Superannuation Act 1972 ("the 1972 Act"). The second protection referred to was the provision in the Bill which became section 2(3) of the 1972 Act. The long title to the 1972 Act described it, inter alia, as "an Act to amend the Law relating to pensions and other similar benefits payable to or in respect of persons in certain employment...". It is clear from the long title and from its various provisions that the 1972 Act was not confined to dealing with entitlements to pensions alone.

32. Section 1 of the 1972 Act, headed "Persons employed in the civil service etc.", provided in relevant part as follows:

> "(1) The Minister for the Civil Service (in this Act referred to as "the Minister")-
>
> *(a)* may make, maintain, and administer schemes (whether contributory or not) whereby provision is made with respect to the pensions, allowances or gratuities which, subject to the fulfilment of such requirements and conditions as may be prescribed by the scheme, are to be paid, or may be paid, by the Minister to or in respect of such of the persons to whom this section applies as he may determine;

(b) may, in relation to such persons as any such scheme may provide, pay or receive transfer values;

(c) may make, in such circumstances as any such scheme may provide, payments by way of a return of contributions, with or without interest; and

(d) may make such payments as he thinks fit towards the provision, otherwise than by virtue of such a scheme of superannuation benefits for or in respect of such of the persons to whom this section applies as he may determine. ...

(3) Before making any scheme under this section the Minister, or, if the Minister so directs in relation to a particular scheme, another Minister of the Crown specified in the direction, shall consult with persons appearing to the Minister or that other Minister, as the case may be, to represent persons likely to be affected by the proposed scheme or with the last-mentioned persons.

(4) This section applies to persons serving –

(a) in employment in the civil service of the State; or

(b) in employment of any of the kinds listed in Schedule 1 to this Act; or

(c) in an office so listed.

(5) Subject to subsection (6) below, the Minister may by order-

(a) add any employment to those listed in the said Schedule 1, being employment by a body or in an institution specified in the order,

(b) add any office so specified to the offices so listed, or

(c) remove any employment or office from the employments or offices so listed.

(6) No employment or office shall be added to those listed in the said Schedule 1 unless the remuneration of persons serving in that employment or office is paid out of moneys provided by Parliament or the Consolidated Fund.

(7) Notwithstanding subsection (6) above, the Minister may by order provide that this section shall apply to persons serving in employment which is remunerated out of a fund specified in the order, being a fund established by or under an Act of Parliament. ..."

33. In section 1(1)(a) the words, "are to be paid, or may be paid", and the removal of section 79 of the 1965 Act from the primary legislation made it clear that a scheme made by the Minister under section 1 could provide for both mandatory payments (i.e. as a matter of legal entitlement for the civil servant employee) and for a discretion for the Minister to make payments.

34. Section 1(4)-(7) indicated that the scope of the statutory regime was persons to whom payments were to be made out of the Consolidated Fund or from monies voted by Parliament.

35. Section 2 of the 1972 Act provided in relevant part as follows:

> "...
>
> (2) Any scheme under the said section 1 may make provision for the payment by the Minister of pensions, allowances or gratuities by way of compensation to or in respect of persons –
>
> *(a)* to whom that section applies; and
>
> *(b)* who suffer loss of office or employment, or loss or diminution of emoluments, in such circumstances, or by reason of the happening of such an event, as may be prescribed by the scheme.
>
> (3) No scheme under the said section 1 shall make any provision which would have the effect of reducing the amount of any pension, allowance or gratuity, in so far as that amount is calculated by reference to service rendered before the coming into operation of the scheme, or of reducing the length of any service so rendered, unless the persons consulted in accordance with section 1(3) of this Act have agreed to the inclusion of that provision.
>
> (4) Subject to subsection (3) above, any scheme under the said section 1, or any provision thereof, may be framed –
>
> *(a)* so as to have effect as from a date earlier than the date on which the scheme is made; or
>
> *(b)* so as to apply in relation to the pensions, allowances or gratuities paid or payable to or in respect of persons who, having been persons to whom the said section 1 applies, have died or ceased to be persons to whom that section applies before the scheme comes into operation; or
>
> *(c)* so as to require or authorise the payment of pensions, allowances or gratuities to or in respect of such persons. ...

(9) Any scheme under the said section 1 may amend or revoke any previous scheme made thereunder.

(10) Different schemes may be made under the said section 1 in relation to different classes of persons to whom that section applies, and in this section "the principal civil service pension scheme" means the principal scheme so made relating to persons serving in employment in the home civil service or the diplomatic service.

(11) Before a scheme made under the said section 1, being the principal civil service pension scheme or a scheme amending or revoking that scheme, comes into operation the Minister shall lay a copy of the scheme before Parliament.

(12) Notwithstanding any repeal made by this Act, the existing civil service superannuation provisions, that is to say, the enactments and instruments listed in Schedule 2 to this Act, shall, with the necessary adaptations and modifications, have effect as from the commencement of this Act as if they constituted a scheme made under the said section 1 in relation to the persons to whom that section applies, being the principal civil service pension scheme, and coming into operation on the said commencement and may be revoked or amended accordingly."

36. Section 2(2) specifically authorised the Minister to include in a scheme made under section 1 provision for payment of "pensions, allowances or gratuities" as compensation for persons who suffer loss of office or employment. This covered, for example, provision for payment of early enhanced pensions and lump sum payments to persons who were subject to compulsory early retirement as contemplated by the 1965 Act and as referred to in the Joint Committee report.

37. Where section 2(3) applied, it conferred a particularly strong protection for civil servants, since the agreement of their representative trade union would be required for any changes to take effect - mere consultation would not be enough. By virtue of section 1(12) of the 1972 Act read with Schedule 2 to that Act, the scheme in the 1965 Act – including section 79 of that Act – was deemed to be a scheme made under section 1 of the 1972 Act as at the commencement of the relevant provisions in the 1972 Act on 25 March 1972. Therefore it appears that that scheme was intended to attract the protection in section 2(3), notwithstanding the incorporation of section 79 of the 1965 Act in the scheme.

38. That impression is reinforced by the terms of paragraph 12 of the Joint Committee report, which records the understanding of the staff and management sides at the time regarding the protections which would apply with the introduction of the Superannuation Bill. Such contemporaneous understanding of the effect of an Act, particularly by an official body like the Joint Committee, constitutes a powerful form of *contemporanea expositio* and is a legitimate aid to the construction of that Act: see

Bennion on Statutory Interpretation, 5th ed., pp. 702-706 and 711-712. That is especially the case where, as here, an Act is being introduced specifically to regulate relations between certain persons and it is those persons who have the understanding in question.

39. This understanding of the effect of section 2(3) is also borne out by the words of section 2(3) itself, as originally enacted. In that regard I accept the submission of Mr Giffin QC for the Claimant that on its natural construction the provision applied to pensions, allowances and gratuities of all forms, including those to be paid by way of compensation for loss of office or employment as referred to in section 2(2) (see the word, "any", in section 2(3)), thus covering both lump sum payments and early or enhanced payments of pension in such cases. The words, "in so far as that amount is calculated by reference to service rendered before the coming into operation of the scheme", in section 2(3) were apt to cover the amount of any lump sum payment or pension payment in case of dismissal on grounds of redundancy, departmental restructuring or compulsory early retirement or the like, where the amount to be paid was calculated by reference to service rendered before the commencement of the 1972 Act (and hence before the deemed commencement of the existing scheme as a scheme under section 1 of the 1972 Act by virtue of section 2(12) of that Act). The operation of the provision was not expressed to depend upon the civil servant having legal rights to such benefits.

40. The presence of the general provision in section 79 of the 1965 Act (as part of the original deemed scheme under section 1 of the 1972 Act) preventing any legal rights to such payments and, indeed, preventing any legal rights even to those pension payments and lump sums due to commence or to be paid upon reaching the ordinary retirement age from arising was clearly not intended to have the effect of depriving civil servants of any protection at all under section 2(3). Section 2(3) was expressed in language apt to cover the administrative arrangements governing payments under the 1965 Act and Estacode, which were well known to both the staff and management sides and which were routinely followed in practice.

41. Ms Laing QC, for the Defendant, accepted that the protection in section 2(3) as originally enacted covered pension payments and lump sums due to commence or to be paid upon reaching the ordinary retirement age, but sought to suggest that it did not cover payments (whether by way of early pension or lump sums) as compensation for earlier loss of office or employment. I can see no textual or other warrant for limiting the operation of section 2(3) in this way. As submitted by Mr Giffin, section 2(3) as originally enacted provided no basis for drawing any distinction between ordinary pension payments and pension and other payments payable in the type of circumstances covered by section 2(2).

42. Ms Laing sought to support her submissions by reference to the notes on clauses prepared for Ministers at the time of the passage of the Superannuation Bill through Parliament in 1972. There is no evidence that these notes on clauses were made generally available in the course of parliamentary debates on the Bill. It seems that they were simply for the private use of Ministers in the course of debates. In my view, it is not legitimate to refer to them as an aid to construction of the legislation. In any event, I did not find any clear or helpful indication in the notes on clauses I was shown in relation to the 1972 Act which would have caused me to depart from the analysis above.

43. The conclusion I have reached that section 2(3) of the 1972 Act as originally enacted covered payments due as a matter of administrative practice rather than legal entitlement, payable in circumstances of loss of office or employment, where such payments were "calculated by reference to service rendered before the coming into operation of the scheme" gives rise to what might be regarded from a certain perspective as an odd position. Why should the strong protection in section 2(3) apply in relation to benefits to which there was no legal entitlement? I consider that the oddity disappears when it is recalled that, by long tradition, the discretion not to pay such benefits by virtue of section 79 of the 1965 Act was formally reserved but does not appear to have been operated in practice. As a matter of practice, both staff and management sides in 1972 took the benefits set out in the 1965 Act and Estacode to be entitlements in all but legal theory. In light of that it made considerable sense from the point of view of civil servants and their unions that the 1972 Act should include the protection set out in section 2(3) as a protection covering not just ordinary pension and lump sum payments upon retirement in the ordinary course, but also pension and lump sum payments (if calculated by reference to length of service) payable as compensation for earlier loss of office or employment as contemplated by section 2(2) of the 1972 Act. In both cases a civil servant was to be regarded as having built up by reference to length of service an expectation closely analogous to a right to enhanced protection (something which could be "relied on with full certainty", in the words of Lord Buckmaster), whether in the form of expectation of an increased pension entitlement if retiring at the ordinary retirement age, or enhanced protection if made redundant or compulsorily retired before then.

44. It is noteworthy that paragraph 12 of the Joint Committee report uses the expression, "pension rights already accrued", to refer to pension rights which have accrued according to the administrative practice up to then (as distinct from as a matter of legal entitlement). This underscores the point that the staff side and the management side regarded the detailed administrative rules operated under the 1965 Act as creating what was in substance a set of accrued rights based on length of service. Viewed as accrued rights, these fell to be protected from future changes to the scheme.

45. Moreover, under the scheme contained in the 1965 Act, compensation for early retirement etc. under the scheme was integrated with the general provisions on payment of pensions. So, for example, where a civil servant aged 50 or over was subject to premature retirement, he was to be entitled to early payment of pension and a lump sum (section 10 of the 1965 Act, read with section 5). The scheme did not draw a distinction between ordinary pensions and lump sums payable on reaching ordinary retirement age on the one hand, and pensions and lump sums payable upon termination of employment at different times on the other. This feature of the scheme, in existence when the 1972 Act was passed, serves to reinforce the point made by Mr Giffin that no distinction in terms of protection of "accrued rights" in relation to pensions and other payments was intended to be drawn between retirement at ordinary retirement age or earlier dismissal so far as the protection conferred by section 2(3) was concerned.

46. This integration of compensation rights and pension rights referred to above continued to be a feature of the first scheme made by the Minister under section 1 of the 1972 Act – the PCSPS - which was laid before Parliament on 15 June 1972 and came into operation on 16 June 1972, and of the PCSPS as it stood when section 2(3)

of the 1972 Act was amended in 1990. It also continued to be a feature of the CSCS when it was separated off from the PCSPS as a distinct scheme in 1994 (as described below), as is illustrated by the terms of rule 2.2 of the CSCS set out above. It continues to be a feature of the amended CSCS.

47. Further, although at the time the 1972 Act came into force the relevant scheme (i.e. that contained in the 1965 Act) did not contain any legal entitlements on the part of civil servants to receive the pension and lump sum payments which it was expected would be paid, it did set out a regime by reference to which any civil servant could invite the Minister to exercise his discretion to make such payments in his favour. In relation to a decision in that regard, the civil servant might have public law claims against the Minister if he did not exercise his discretion in a fair and proper manner. Those claims would be likely to be improved if the Minister continued, despite amendment of the scheme, to be subject to an administrative practice or policy of making payments calculated by reference to length of reckonable service in accordance with the scheme prior to its amendment. In particular, it might well be difficult in public law terms for the Minister to fail to recognise existing administrative entitlements as set out in the scheme in individual cases. Therefore, protection by virtue of section 2(3) of "accrued rights" under the administrative scheme, even though they did not constitute legal entitlements as such, would be of real legal benefit to the individuals who had accumulated them by long service. It is plausible to infer that, for this reason also, Parliament intended by section 2(3) of the 1972 Act to confer protection for individuals in relation to such "accrued rights".

Development of the legal framework from 1972 and the interpretation of section 2(3) of the 1972 Act as amended

48. At first, the schemes made by the Minister under section 1 of the 1972 Act followed the pattern of the scheme under the 1965 Act by dealing with pensions and compensation arrangements in a single scheme – the PCSPS. Rule 8.1 of the PCSPS gave effect to the recommendation of the Joint Committee in paragraph 91 of its report by adapting the language of section 79 of the 1965 Act to provide that certain benefits, including "compensation payments for premature retirement under section 10 [of the PCSPS]", should be paid only as a matter of discretion not right. By inference from that provision and from the language of entitlement in relation to other benefits (such as pension benefits) used elsewhere in the PCSPS, the PCSPS conferred legal rights to those other benefits (including, on its proper construction in light of the Joint Committee report, pension benefits when they became payable in respect of early loss of employment).

49. In 1990 the 1972 Act was amended by the Pensions (Miscellaneous Provisions) Act 1990 ("the 1990 Act"). The changes were introduced to take account of pension rights under money purchase schemes which were now to be available (i.e. schemes whereby additional pension rights could be purchased by money contributions made by employees). Section 2(3) of the 1972 Act was amended so as now to read:

> "No scheme under the said section 1 shall make any provision which would have the effect of reducing the amount of any pension, allowance or gratuity, in so far as that amount is directly or indirectly referable to rights which have accrued (whether by virtue of service rendered, contributions paid or

any other thing done) before the coming into operation of the scheme, unless the persons consulted in accordance with section 1(3) of this Act have agreed to the inclusion of that provision."

50. This is the provision which is currently in force. Ms Laing submits that the new reference to "rights which have accrued" in section 2(3) (as amended) shows that the provision confers protection only in relation to benefits under the PCSPS or CSCS to which individual civil servants have a full legal entitlement. She further submits that such benefits are limited to benefits payable when retirement occurs at normal retirement age and do not include benefits payable under the CSCS in relation to redundancy, compulsory early retirement and so forth.

51. I do not accept these submissions. As to the first point, in my judgment the phrase "rights which have accrued" uses the words "rights" and "accrued" in the same natural, non-technical sense in which they were used in paragraph 12 of the Joint Committee report. In the context of the PCSPS as it stood down to 1994 and now in the context of the PCSPS and CSCS, those entitlements which existed as a matter of administrative practice (albeit not as a matter of legal right) were nonetheless regarded by both staff and management sides as "accrued rights" in the sense relevant for the protection of section 2(3) to apply. The position down to 1972, according to which benefits which were as a matter of legal form discretionary were nonetheless treated in substance as entitlements and were in fact always paid, had been continued without a break up to the amendment of the law in 1990. Moreover, the language in the PCSPS in relation to such discretionary benefits was the language of entitlement and right. Thus, on the natural reading of section 2(3) in its particular context and against the background of the Joint Committee report, I consider that the phrase, "rights which have accrued", was apt to cover both those pension and other rights which were a matter of legal entitlement and also other "rights" to benefits which were in substance a matter of administrative entitlement.

52. This interpretation of section 2(3) as amended is supported by a number of other factors:

i) Under the PCSPS as it stood in 1990, entitlements to pension payments and to other lump sum payments were closely bound up together, were expected to be paid in each case as of course, and there was no apparent reason for treating them differently in terms of protection under section 2(3). The reason given in the Joint Committee report and subsequently for continuing to treat some benefits as discretionary was to secure tax advantages for employees, which reason did not suggest that there should be any lesser protection in respect of such benefits than in respect of pension payments so far as concerns the operation of section 2(3);

ii) It appears from examination of the terms of the 1990 Act and the other amendments it introduced into the 1972 Act (see e.g. section 1(2A), referring to money purchase schemes) that the intention of Parliament in the 1990 Act was simply to make amendments to the 1972 Act to accommodate money purchase schemes and not to remove or cut down substantive protective rights

conferred by the 1972 Act as originally enacted, in particular in section 2(3). If the intention had been to remove or cut down the protection for individuals afforded by section 2(3) as originally enacted, I think that much clearer language would have been used; and

iii) The Minister who introduced the 1990 amendment in Parliament made statements on the second reading of the Bill in 1990 (see Hansard, HC Deb., 8 January 1990, vol. 164 cols. 709-727) which made clear that there was nothing "in this largely technical and tidying up Bill that needs to be controversial..." and that the Bill made only "minor changes to the legislative framework for public service pensions" including "minor consequential amendments occasioned by the wider scope for making additional voluntary contributions introduced following the Social Security Act 1986" and did "not make major amendments to the existing law". In relation to the clause containing the amendment to section 2(3) of the 1972 Act, he said: "[it] brings money purchase pension schemes for civil servants within the scope of the existing arrangements for agreeing amendments to civil service pension schemes that may adversely affect the accrued rights of scheme members or pensioners". In my view, these statements constitute statements in Parliament by the promoter of the Bill of the requisite clarity to provide a good indication of the object or mischief at which a provision was aimed, to which it is legitimate and appropriate to have regard when interpreting the legislation in question. The statements clearly show that it was no part of the purpose for the amendment to cut down existing protective rights as already set out in section 2(3), but rather was to extend that existing protection to cover rights of the relevant kind which had been acquired by making additional voluntary contributions as well as by length of service.

53. In addition to these statements in Hansard, both parties sought to rely upon the notes on clauses which were prepared in relation to the relevant amendment in 1990. It appears that these notes on clauses were circulated generally to MPs, unlike the notes on clauses in relation to the 1972 Act referred to in para. [42] above. This seemed to have been done pursuant to a practice which developed for Ministers to share notes on clauses with MPs (see *Craies on Legislation*, 9th edition, paragraph 9.4.1). This was in the period before the adoption of the modern practice of publishing Explanatory Notes alongside Bills: see *Craies*, paras. 9.4.1 to 9.4.5 and 27.1.7; *Bennion, op. cit.*, pages 641-643.

54. There are some examples in the authorities of reference being made to notes on clauses (see *Davidson v The Scottish Ministers* [2005] UKHL 74 at [50] per Lord Hope and *R. v St Helens Justices, ex p. Jones* [1999] 2 All ER 73), but it is unclear quite what weight is given to them in these cases and there was no detailed discussion whether it is in fact appropriate for reference to be made to such materials as aids to the interpretation of an Act of Parliament.

55. In my judgment, notes on clauses (as distinct from published explanatory notes) are not a proper aid to the interpretation of an Act of Parliament, whether they are circulated to MPs (as happened in relation to the 1990 Act) or not (as in relation to the 1972 Act). Although in the former case, unlike the latter case, it might be argued that there are some grounds for saying that the notes on clauses form part of the contextual background against which the Bill was passed by Parliament as a collective body, so

that they should be taken to have an interpretive role and status analogous to that of statements in a White Paper proposing legislation, or in clear statements by a promoter of a Bill in Parliament or in modern form Explanatory Notes, I think that there is an important difference from all these cases. Notes on clauses when not cited in debate are private documents not available to the public at large, unlike White Papers, statements reported in Hansard and published Explanatory Notes. An Act of Parliament creates law applicable to all citizens. In my judgment, it is fundamental that all materials which are relevant to the proper interpretation of such an instrument should be available to any person who wishes to inform himself about the meaning of that law. That is not the position in relation to notes on clauses and for that reason I do not consider they are a legitimate aid to construction of an Act of Parliament. (I should perhaps add that, in any event, even if reference were to be made to the notes on clauses for the 1990 Act, they would in my view serve to confirm the point already made above by reference to Hansard).

56. For these reasons, I accept Mr Giffin's submission that section 2(3) of the 1972 Act as amended is properly to be interpreted as conferring protection in relation to all entitlements in the PCSPS and CSCS referable to length of service and contributions paid, whether they constitute legal entitlements in the full sense or entitlements as a matter of established and declared administrative practice as set out in any relevant scheme made under section 1 of the 1972 Act.

Application of section 2(3) of the 1972 Act in relation to the CSCS

57. It remains to explain the significance of that conclusion in relation to the present situation. After the 1972 Act was amended in 1990, further changes were made to the PCSPS. In 1994, for reasons to do with seeking to ensure that the civil service pension scheme complied with Inland Revenue standards and with seeking to facilitate possible privatisation of public services, the elements of the PCSPS which related to redundancy, compulsory early retirement and so forth were separated off from the ordinary pension provisions, to constitute the CSCS. The CSCS was made as a scheme under section 1 of the 1972 Act, since it amended the PCSPS: see sections 2(9) to 2(11) of the 1972 Act. However, it is clear that this change was not intended to produce any substantive alteration in the pension and other benefits available to civil servants, and the CSCS and PCSPS remained closely linked, as rule 2.2 of the CSCS set out above illustrates.

58. The CSCS continued to include a provision derived from section 79 of the 1965 Act. Rule 1.4 of the CSCS provides:

> "Compensation payments for early retirement or severance under sections 2 to 8 of this scheme and for personal injury under section 10 of this scheme will be paid at the discretion of the Minister, and nothing in this scheme will extend or be construed to extend to give any person an absolute right to them."

But, as with the PCSPS before the changes in 1994, other provisions in the CSCS (including in sections 2 to 8 and section 10) are expressed in terms of entitlement: see e.g. rule 2.1 set out above.

59. The change in 1994 to hive the CSCS off from the PCSPS therefore left the basic pattern for provision of benefits unchanged from what it had been when the 1972 Act was enacted. As before 1994, all benefits under the PCSPS and CSCS, whether payable as a matter of legal or administrative entitlement, were paid without exception. In light of the interpretation of section 2(3) of the 1972 Act as amended set out above, therefore, those benefits under the CSCS in relation to redundancy, compulsory early retirement and the like, which are defined by reference to length of service or contributions paid, all attract the protection of section 2(3). The Claimant's agreement is required before the terms governing the amount of those benefits may be altered.

60. For these reasons, the Claimant's application for judicial review succeeds and the amended CSCS falls to be quashed. Consideration will now need to be given to what any quashing order should say and how far the effects of this judgment extend. The parties should consider the terms of the order which they propose should be made in the light of this judgment. Any outstanding area of dispute in relation to the terms of the order can be referred back to the court for determination.

61. Since I have accepted the Claimant's primary case based on section 2(3) of the 1972 Act, it is neither necessary nor appropriate to consider its alternative case based on an alleged breach of legitimate expectation, nor the other alternative cases it presented in relation to the operation of section 2(3) of the 1972 Act.

Annex 3

Existing Terms of the Civil Service Compensation Scheme (Northern Ireland)

Redundancy Benefits Under Classic

Voluntary Early Severance if you are Under 50

Compulsory early severance terms are given to those aged under 50 who are made redundant (other than through inefficiency or ill health) or who apply for redundancy when their employers call for volunteers.

What are the benefits?

Your benefits will depend upon the length of your qualifying service.

Less than one year's qualifying service

You will not receive any payments under the Civil Service Compensation Scheme (Northern Ireland) [CSCS (NI)] and we cannot preserve (keep) your pension benefits for payment when you reach pension age.

However, you may be able to transfer your benefits out of classic and into another pension arrangement.

One to two years' qualifying service

You will receive a lump sum compensation payment of one month's final pensionable earnings for each year of reckonable service (any part year will be paid as a proportion of a whole year) plus one month's final pensionable earnings for any reckonable service after age 35, limited to three years' final pensionable earnings.

If you have had any part-time service this figure will be based on a proportion of your full-time and part-time service. Compensation lump sums are free of tax up to £30,000.

You will receive this compensation payment immediately.

If you joined or re-joined on or after 1 April 1997, any service credits, added years or previous service in the Northern Ireland Civil Service counts only towards pension benefits.

We cannot preserve (keep) your pension benefits for payment when you reach pension age.

However, you may be able to transfer your benefits out of classic and into another pension arrangement.

If you are neither married nor in a civil partnership, you will receive a refund of the contributions you have paid towards a widow's, widower's or civil partner's pension.

Two or more years' qualifying service

You are entitled to a pension and lump sum which we will keep and pay to you at pension age.

We work out your pension as follows:

Final pensionable earnings x reckonable service

80

We work out your lump sum as: 3 x your pension

However, you may be able to transfer your benefits out of classic and into another pension arrangement.

Compensation lump sum

You will receive an immediate lump sum compensation payment. We work this out according to your age and length of reckonable service.

A: All age groups

One month's final pensionable earnings for each year of reckonable service; plus

B: For those over 30 who have over 5 years' qualifying service

The lower of:

One month's final pensionable earnings for each year of reckonable service after completing five years' qualifying service; or

One month's final pensionable earnings for each year of reckonable service after age 30; plus

C: For those over 35

One month's final pensionable earnings for each year of reckonable service after age 35.

We limit your lump sum compensation payment to a maximum payment of three years' final pensionable earnings.

(If you have had part-time service in the last three years of reckonable service this figure will be based on a proportion of your full-time and part-time service.)

If you joined or re-joined the NICS on or after 1 April 1997, any service credits, added years or previous service in the PCSPS (NI) will not count towards your CSCS (NI) benefits, but will count towards your pension benefits.

If you are aged between 40 and 49 and were serving in a mobile grade on 1 April 1987 you may be entitled to special arrangements, called reserved rights.

Compensation lump sums are free of tax up to £30,000. There is a further tax-free element in addition to the £30,000 limit, in the extra lump sum compensation paid to members who have reserved rights to the pre-April 1987 terms.

Voluntary Early Retirement If You Are Over 50

Compulsory Early Retirement terms are given to those aged 50 or over with at least 5 years' qualifying service and who must retire. It covers those who are made redundant (other than through inefficiency or ill health) or who apply for redundancy when their employer calls for volunteers.

What are the benefits?

Your benefits will depend on the length of your service.

Less than one year's qualifying service

You will not receive any payments under the Civil Service Compensation Scheme (Northern Ireland) [CSCS (NI)] and we cannot preserve (keep) your pension benefits for payment when you reach pension age.

However you may be able to transfer your benefits out of classic and into another pension arrangement.

One to two years' qualifying

You will receive a lump sum compensation payment of two months' final pensionable earnings for any year of reckonable service, limited to three years' final pensionable earnings (any part year will be paid as a proportion of a whole year). You will receive this compensation payment immediately.

Compensation lump sums are free of tax up to £30,000.

We cannot preserve (keep) your pension benefits for payment when you reach pension age. However you may be able to transfer your benefits out of classic and into another pension arrangement.

If you joined or re-joined the NICS on or after 1 April 1997, any service credits, added years or previous service in the PCSPS (NI) will not count towards your CSCS (NI) benefits, but will count towards your pension benefits.

Two to five years' qualifying service

You are entitled to a preserved pension and lump sum which we will pay to you at pension age.

We work out your pension as follows:

Final pensionable earnings x reckonable service

80

We work out your lump sum as:

3 x your pension

You may be able to transfer your benefits out of classic and into another pension arrangement.

You will receive a lump sum compensation payment. We work this out as two months' final pensionable earnings for every year of reckonable service limited to three years' final pensionable earnings.

You will receive this compensation payment immediately.

Compensation lump sums are free of tax up to £30,000.

You can use your compensation lump sum to buy added pension.

If you joined or re-joined the NICS on or after 1 April 1997, any service credits, added years or previous service in the PCSPS (NI) will not count towards your CSCS (NI) benefits, but will count towards your pension benefits.

Five or more years' qualifying service

You have the choice of either:

- An enhanced (increased) pension and tax-free lump sum paid immediately plus a lump sum compensation payment
  (Option A); or
- All your additional compulsory early retirement benefits paid solely in the form of compensation, with an unenhanced pension and tax-free lump sum preserved for payment at pension age
  (Option B)

Option A

We enhance (increase) your reckonable service by up to 6 $^{2}/_{3}$ years as long as:

- Your total reckonable service is not then more than twice its actual length: and
- The value of your benefits would not then be greater than those you would have received had you continued working in your current grade until your pension age.

Important Note

We then make two further calculations to find out the amount of reckonable service and final pensionable earnings that we will use when we work out the benefits we will pay you.

These two calculations are:

A. Your actual reckonable service plus 6 2/3 years (up to a maximum of 51 2/3 years) and your final pensionable earnings at your early retirement date.

B. Your projected reckonable service (up to a maximum of 45 years) and projected final pensionable earnings.

We use the smaller amount to work out your pension benefits. If the second calculation is used we make a further calculation to work out the limit of the enhancement because of the 45 years' limit.

If you work part-time, the amount of this increase will be in the proportion that your actual reckonable service bears to the equivalent full-time reckonable service.

In all cases, if you joined or re-joined the NICS on or after 1 April 1997, any service credits, added years or previous service in the NICS will not count towards your CSCS (NI) benefits, but will count towards your pension benefits.

We pay you a pension and tax-free lump sum immediately.

We work out your pension as follows:

Final pensionable earnings x reckonable service
80

We work out your lump sum as:

3 x your pension

We make a deduction from this lump sum to cover the contributions you would have made towards spouse's or civil partner's benefits for any period of enhanced reckonable service.

However, we will not make this deduction if you are neither married nor in a civil partnership, and you will receive a refund of some or all of the contributions you have already paid towards a spouse's or civil partner's pension.

You will also receive a one-off lump sum compensation payment.

This is equal to six months' final pensionable earnings and is payable immediately. Compensation lump sums are free of tax up to £30,000.

If you have had part-time service in the last three years of reckonable service

the lump sum compensation payment is calculated by reference to the actual pay and pensionable allowances rather than by the full-time rate of pay.

In all cases, if you joined or re-joined the NICS on or after 1 April 1997, any service credits, added years or previous service in the PCSPS (NI) will not count towards your CSCS (NI) benefits, but will count towards your pension benefits.

You can use your compensation lump sum to buy added pension.

Option B

Your pension and tax-free lump sum will not be enhanced. They will be preserved for payment at pension age.

But we will pay you an annual compensation payment until you reach pension age equivalent to the enhanced pension payable under Option A. We will then pay you a further annual compensation payment from pension age so that when added to your preserved pension it is equivalent to the enhanced pension payable under Option A.

However, because your pension itself is not enhanced, neither would a pension for your spouse or civil partner be. We will not, therefore, make a deduction from any of your benefits to cover contributions towards spouse or civil partner benefits. You can choose to give up (commute) the annual compensation payment from pension age for a lump sum. This lump sum is 12 times the annual rate of compensation payment.

We will pay you lump sum compensation when you leave which will include an element equal to six months' final pensionable earnings calculated in the same way as under Option A (see previous page). The lump sum compensation will also have two further elements calculated as follows:

- 3/80 x final pensionable earnings x service enhancement (of up to 6 2/3 years).
- An element recognising that you have to wait until pension age for the full value of your tax-free lump sum.

This is calculated as follows:

3/80 x final pensionable earnings x reckonable service x factor

What factor is used to calculate the element relating to having to wait until pension age for the full value of your pension lump sum?

Age at retirement (year and complete months)

From	To	Factor
50 years 0 months	50 years 5 months	0.285
50 years 6 months	50 years 11 months	0.272
51 years 0 months	51 years 5 months	0.260
51 years 6 months	51 years 11 months	0.247
52 years 0 months	52 years 5 months	0.234
52 years 6 months	52 years 11 months	0.221
53 years 0 months	53 years 5 months	0.207
53 years 6 months	53 years 11 months	0.193
54 years 0 months	54 years 5 months	0.179
54 years 6 months	54 years 11 months	0.165
55 years 0 months	55 years 5 months	0.151
55 years 6 months	55 years 11 months	0.136
56 years 0 months	56 years 5 months	0.121
56 years 6 months	56 years 11 months	0.106
57 years 0 months	57 years 5 months	0.090
57 years 6 months	57 years 11 months	0.074
58 years 0 months	58 years 5 months	0.058
58 years 6 months	58 years 11 months	0.042
59 years 0 months	59 years 5 months	0.025
59 years 6 months	59 years 11 months	0 008

Important Note

If you are over pension age, you will not be eligible for these benefits. You may, however, be eligible for compensation equivalent to that which would be payable under the statutory provisions of the Employments Rights (NI) Order 1996.

Purchase of added pension

You may be able to use your compensation lump sum to buy added pension.

Options available for pension and lump sum

You may opt to take your pension benefits (not Annual Compensation Payment) in a different form.

- Giving up some of your pension for a larger lump sum – You may choose to give up (commute) some of your pension in exchange for an additional lump sum (on top of the standard lump sum of 3 times pension). Within the maximum, you can choose how much extra lump sum you want, but for each £12 of additional lump sum you must give up £1 of annual pension. Reducing annual pension in this way generally has no impact on dependants' pensions as these are based on your pension before you give any up for a higher lump sum. However, if you are aged 75 or over when you die, the tax rules on pensions will restrict the total of any dependants' pensions payable to a maximum of the amount of your pension at the date of your death. As taking a higher lump sum reduces your pension, this might lead to dependants' pensions being reduced if you die after reaching 75.

If you are single and eligible to receive a partial refund of WPS (widows'/widowers' pension scheme) contributions on retirement, you will have less scope to give up pension for an additional lump sum. This is because the total of any WPS refund plus any additional lump sum you choose to take cannot exceed the limit of 33/14 times your initial pension.

- Exchanging your lump sum for an increased pension – You may choose to give up all, or part, of your retirement lump sum to increase your own pension, or increase your own pension and also your widow's, widower's or civil partner's pension.
- Allocation of pension – You many choose to give up part of your pension to provide benefits for another person. This is known as 'allocation of pension'. If you take this option your pension is permanently reduced.

Note: Pension lump sums are tax-free subject to the lifetime allowance.
Additional Information (All categories)

As this is a voluntary scheme, staff will leave on an agreed date and will not be entitled to any compensation in lieu of notice.

Staff aged over 60

If you are over age 60 on leaving service, you will receive an annual pension and lump sum based on your reckonable service. In addition, you will receive a compensation lump sum of 6 months pay or you may receive a compensation payment under the Employment Rights (Northern Ireland) Order 1996.

Redundancy benefits under Premium and Classic Plus

Voluntary Early Severance if you are Under 50

Who qualifies?

Compulsory early severance terms are given to those aged under 50 with at least one year's qualifying service who are forced to leave early (other than through inefficiency or ill health). Those aged 50 or over who do not have sufficient service to be eligible for compulsory early retirement may also qualify for the compulsory early severance terms.

What are the benefits?

We pay you a compensation lump sum calculated as:

- One month's final pensionable earnings for each year of current reckonable service; plus
- One month's final pensionable earnings for each year of current reckonable service after completing five years' qualifying service or, if less, for each year of current reckonable service after age 30; plus
- One month's final pensionable earnings for each year of current reckonable service after age 35.

The maximum lump sum is 3 years' final pensionable earnings (or a pro rata amount if you have had recent part-time service).

What happens to my pension?

If you are a member of the classic plus or premium pension schemes with at least two years' qualifying service (or have transferred pension rights into classic plus or premium from a personal pension), we preserve (or freeze) your pension until pension age, but you could apply to take it early on actuarially-reduced terms from age 55 (or from age 50 if you were employed before 6 April 2006).

If you are a member of classic plus or premium with less than two years' service we will instead give you a refund of your pension scheme contributions less your share of the cost of reinstating you into the State Second Pension (S2P). If you have a partnership pension account, it will be for you to decide when to turn your pension pot into an annuity (an income for life). You can do this at any time between the ages of 50 (55 from 2010) and 75.

What about tax?

Under current legislation, your compensation lump sum will be tax-free up to a maximum of £30,000 and you will pay income tax on anything over this.

When your pension comes into payment, you will have an option to give up some of your pension for a lump sum. Under current legislation, this lump sum will be tax-free subject to the lifetime allowance. You will pay income tax on your pension as if it were earned income.

Voluntary Early Retirement if you are 50 or Over

Compulsory Early Retirement terms are given to those aged 50 and over who have at least five years' qualifying service and who are forced to retire early (other than through inefficiency or ill health). It includes those who are made redundant and those who apply for redundancy when their employer calls for volunteers.

What are the benefits?

We pay you:

- A lump sum compensation payment when you leave;
- An annual compensation payment (ACP) until you reach pension age; and
- A smaller ACP or a further lump sum when you reach pension age.

How do you work out the lump sum?

The lump sum when you leave has three elements:

- A maximum of 6 months' final pensionable earnings or a pro-rata amount if you have had recent part-time service; plus
- 3/80 x your final pensionable earnings x a notional service enhancement; plus
- An element recognising that you will have to wait until pension age for the full value of your pension lump sum.

This is calculated as follows:

3/80 x your current reckonable service x your final pensionable earnings x factor.

What factor is used to calculate the element relating to having to wait until pension age for the full value of your pension lump sum?

From	To	Factor
50 years 0 months	50 years 5 months	0.285
50 years 6 months	50 years 11 months	0.272
51 years 0 months	51 years 5 months	0.260
51 years 6 months	51 years 11 months	0.247
52 years 0 months	52 years 5 months	0.234
52 years 6 months	52 years 11 months	0.221
53 years 0 months	53 years 5 months	0.207
53 years 6 months	53 years 11 months	0.193
54 years 0 months	54 years 5 months	0.179
54 years 6 months	54 years 11 months	0.165
55 years 0 months	55 years 5 months	0.151
55 years 6 months	55 years 11 months	0.136
56 years 0 months	56 years 5 months	0.121
56 years 6 months	56 years 11 months	0.106
57 years 0 months	57 years 5 months	0.090
57 years 6 months	57 years 11 months	0.074
58 years 0 months	58 years 5 months	0.058
58 years 6 months	58 years 11 months	0.042
59 years 0 months	59 years 5 months	0.025
59 years 6 months	59 years 11 months	0 008

How big is the ACP?

The ACP to pension age is:

Your final pensionable earnings x (your current reckonable service plus the notional service enhancement) x 1/80

The ACP from pension age is:

Your final pensionable earnings x the notional service enhancement x 1/80

You can choose to give up (commute) the ACP from pension age for a lump sum. This lump sum is 12 times the annual rate of ACP. If you have a partnership pension account you will receive this lump sum and you will not have the choice of an ACP from pension age.

ACPs in payment are increased every year in line with the cost of living. These increases are paid to all those in receipt of an ACP aged 55 or over, and make sure that the benefit maintains its original buying power.

Options available for pension and lump sum

You may opt to take your pension benefits (not Annual Compensation Payment) in a different form.

Giving up some pension for lump sum:

Classic plus member – you may choose to give up (commute) some of your pension in exchange for an additional tax free lump sum on top of the automatic lump sum that you are entitled to.

Premium member – you may choose to give up some of your pension in exchange for a tax free lump sum.

Within the maximum, you can choose how much lump sum you want, but for each £12 of lump sum you must give up £1 of pension. Reducing annual pension in this way generally has no impact on dependants' pensions as these are based on your pension before you give any up for a higher lump sum. However, if you are aged 75 or over when you die, the tax rules on pensions will restrict the total of any dependants pensions payable to a maximum of the amount of your pension at the date of your death.

As taking a higher lump sum reduces your pension, this might lead to your dependants' pensions being reduced if you die after reaching 75. But this is only likely to be an issue if you leave two or more children under age 18 (or under age 23 if they are in full-time education) when you die over age 75. If you are in classic plus and eligible to receive a partial refund of WPS (widow's/widowers' pension scheme) contributions on retirement, the refund will count towards the maximum limit of additional lump sum you can take.

- Exchanging your lump sum for an increased pension – If you are a classic plus member you may choose to give up all, or part, of your standard retirement lump sum to increase your own pension, or increase your own pension and also your widow's, widower's or civil partner's pension.
- Allocation of pension – You may choose to give up part of your pension to provide benefits for another person. This is known as 'allocation of pension'. If you take this option, your pension is permanently reduced.
    - Added pension – You can use your compensation lump sum to buy added pension.

Additional Information (All categories)

As this is a voluntary scheme, staff will leave on an agreed date and will not be entitled to any compensation in lieu of notice.

Staff aged over 60

If you are over age 60 on leaving service, you will receive an annual pension and lump sum based on your reckonable service. In addition, you will receive a compensation lump sum of 6 months pay or you may receive a compensation payment under the Employment Rights (Northern Ireland) Order 1996.

Annex 3A

Comparison Between Current Northern Ireland Terms and New GB Terms – Worked Examples

Current Arrangements	Proposed Arrangements (GB Arrangements)
Example 1 **Compulsory Early Severance (Classic)*** Greg is aged 45. His final pensionable earnings are £14,000 and he has 12 years' reckonable and qualifying service. Pension = (£14,000 x 12) = £2,100 a year 80 (preserved) Lump sum = 3 x £2,100 = £6,300 (preserved) Lump Sum Compensation Payment = • 1 month for each of 12 years = 12 months • 1 month for each year of reckonable service after 5 years' qualifying service = 7 months • 1 month for each year of reckonable service after age 35 = 10 months Total = 29 months = (£14,000 x 29) = £33,833	**Redundancy Terms** Pension = (£14,000 x 12)/80 = £2,100 a year (preserved) Lump Sum = 3 x £2,100 = £6,300 (preserved) Lump Sum Compensation payment of 1 months pay per year of service up to a maximum of 21 months if Voluntary Redundancy / 12 months if Compulsory Redundancy for those under scheme pension age. Lower Pay protection applies – salary deemed to be £23,000. Voluntary Redundancy (Compensation Scheme): Compensation payment: (12 x £23,000) / 12 = £23,000 Voluntary Redundancy (Superannuation Bill) Compensation payment: (12 x £14.000) / 12 = £14,000 Compulsory Redundancy (Compensation Scheme): Compensation payment (12 x £23,000) / 12 = £23,000 Compulsory Redundancy (Superannuation Bill): Compensation payment (12 x £14,000) /12 = £14,000

Current Arrangements	Proposed Arrangements (GB Arrangements)
Example 2 **Compulsory Early Severance (Classic)** Nicola is aged 38. Her final pensionable earnings are £22,000 and she has 4 years reckonable and qualifying service. Pension = (£22,000 x 4) = £1,100 a year 80 (preserved) Lump sum = 3 x £1,100 = £3,300 (preserved) Lump sum compensation payment = • 1 month for each of 4 years = 4 months • Nil as Nicola has not completed 5 years' qualifying service • 1 month for each year of reckonable service after age 35 = 3 months Total = 7 months = (£22,000 x 7) = £12,833 12	**Redundancy Terms** Pension = (£22,000 x 4) / 80 = £1,100 a year (preserved) Lump Sum = 3 x £1,100 = £3,300 (preserved) Lump Sum Compensation payment of 1 months pay per year of service up to a maximum of 21 months if Voluntary Redundancy / 12 months if Compulsory Redundancy for those under scheme pension age. Lower Pay protection applies – salary deemed to be £23,000. Voluntary Redundancy (Compensation Scheme): Compensation Payment: (4 x £23,000) /12 = £7,666.66 Voluntary Redundancy (Superannuation Bill): Compensation Payment: (4 x £22,000) / 12 = £ 7333.33 Compulsory Redundancy (Compensation Scheme): Compensation Payment: (4 x £23,000) /12 = £7,666.66 Compulsory Redundancy (Superannuation Bill): Compensation Payment: (4 x £22,000) / 12 = £7,333.33

Current Arrangements	Proposed Arrangements (GB Arrangements)
Example 3 – Approved Early Retirement (Classic) David is aged 55 and has final pensionable earnings of £14,000. He has 25 years' reckonable service. The benefits are payable immediately: Pension = (£14,000 x 25) = £4,375 a year 80 Lump sum = 3 x £4,375 = £13,125 Cost to the Employer 5 x £4,375 = £21,875	**Voluntary Exit Terms** Employer has flexibilities - may choose to apply the lower paid protection and whether or not they offer to top up the compensation payment on current service for those over minimum pension age and wish to take their benefits without reduction. Therefore if lower paid protection is applied any compensation payment will be higher, Compensation Payment: With Protection : 21 x £23,000 / 12 = £40,250 or Without Protection: 21 x £14,000 / 12 = £24,500 If Employer chooses to offer buy out of actuarial reduction, where compensation is foregone, it will cost £22,251.25. Therefore in this case a residual compensation payment is payable, the amount dependent on whether or not protection is payable: With Protection: Balance of compensation payable = £17,998.75 or Without Protection: Balance of compensation = £2,248.75 As the compensation payable exceeds the actuarial reduction cost in this case, regardless of Employer choosing to offer buy out of the reduction the member could opt to offset the compensation payable against the reduction.

Current Arrangements	Proposed Arrangements (GB Arrangements)
Example 4 – Compulsory Early Retirement (Classic) Melanie is aged 55. Her final pensionable earnings is £20,000, her pension age is 60 and she has 25 years' reckonable service. In this case, Melanie's service enhancement = 5 years. Option A Melanie's pension for life = £20,000 x (25 + 5) x 1/80 = £7,500 per year Melanie's tax-free lump sum = 3 x pension = 3 x £7,500 = £22,500 Melanie's lump sum compensation = 6/12 x £20,000 = £10,000 All benefits are paid immediately. Option B Melanie's annual compensation payment to pension age = £20,000 x (25 + 5) x 1/80 = £7,500 per year Melanie's pension from pension age = £20,000 x 25 x 1/80 = £6,250 per year Melanie's annual compensation payment from pension age = £20,000 x 5 x 1/80 = £1,250 per year Alternatively, Melanie could take a lump sum instead of 12 x £1,250 = £15,000 Melanie's tax-free lump sum payable at pension age = 3 x pension = 3 x £6,250 = £18,750 Melanie's lump sum compensation payable at date of leaving: • Part 1 = 6/12 x £20,000 = £10,000 • Part 2 = 3/80 x £20,000 x 5 = £3,750 • Part 3 = 3/80 x £20,000 x 25 x 0.151 (a factor based on Melanie's age) = £2,831.25 Total lump sum = £16,581.25	**Redundancy Terms** The compensation payable depends on whether or not the redundancy is Voluntary or Compulsory as does whether or not the Employer offers buy out/top-up of the actuarial reduction to permit pension benefits to be paid early if the member is over the minimum pension age. Voluntary Redundancy (Compensation Scheme): Maximum compensation payment = 1 months pay for each year up to the maximum of 21 months. The employer must apply the protection for the lower paid and must offer buy out/top up of the actuarial reduction if member over minimum pension age. Compensation payment: (21 x £23,000) / 12 = £40,250 Buy out of actuarial reduction would cost £31,787.50. Therefore residual compensation payment payable = £8,462.50 If reduction bought out – benefits payable: Compensation payment £8,462,50 Pension £6,250.00 payable immediately Lump Sum £18,750 payable immediately. Voluntary Redundancy (Superannuation Bill): (12 x 20,000) / 12 = £20,000 Compulsory Redundancy (Compensation Scheme) Maximum compensation payment = 1 months pay for each year up to the maximum of 12 months. The Employer has no flexibility to offer buy out/top up of the actuarial reduction although member may choose to use compensation payment to do so but buy out must cover all the reduction. However protection for lower paid must be applied to the compensation payable. Compensation payment: (12 x £23,000) / 12 = £23,000 As actuarial reduction would cost £31,787.50, member would need to fund the difference between the compensation payment payable and this amount in order for benefits to be paid unreduced immediately. However, member could take the compensation payment in full and take a reduced pension of £4,756.25 and reduced lump sum of £15 712.50 payable immediately. Compulsory Redundancy (Superannuation Bill): (12 x £20,000) / 12 = £20,000

Current Arrangements	Proposed Arrangements (Gb Arrangements)
Example 5 **Compulsory Early Retirement (Premium)** Joan is aged 60 and is a member of the premium scheme. Joan's final pensionable earnings are £20,000, her pension age is 60 and she has 25 years' current reckonable service Joan's compensation lump sum – limited to 6 months pensionable pay: (6 x £20,000) / 12 = £10,000 Pension payable immediately: (25 x £20,000) / 60 = £8,333.33 There is no automatic scheme lump sum but Joan can commute pension to provide a lump sum – commutation 12:1	**Redundancy Terms** **Compulsory Early Retirement Terms** Compensation 1 months' pay for each year of service limited to 6 months where the member is over the retiring age for the scheme. However, lower paid protection must be applied to the compensation payable. Compulsory Redundancy (Compensation Scheme) : (6 x £23,000) / 12 = £11,500 Pension payable immediately: (25 x £20,000) / 60 = £8,333.33 There is no automatic scheme lump sum but Joan can commute pension to provide a lump sum – commutation 12:1 Compulsory Redundancy (Superannuation Bill): (6 x £20,000) / 12 - £10,000

Current Arrangements	Proposed Arrangements (GB Arrangements)
Example 6 - Compulsory Early Retirement (Prison Officer Reserved Rights) Mervyn is age 51 and is a member of the Classic scheme. Mervyn's normal retirement age is 55 and his service doubles after 20 years of service. He has 27 years 18 days service and an extra 7 years 18 days doubling. Therefore has total service of 34 years 36 days. Service is further enhanced by 3 years 176 days to age 55 Mervyn's pension for life = £38111.28 x (34 y 36 d + 3 y 176 d) x 1/80 = £17903.15 per year Mervyn's tax-free lump sum = 3 x pension = 3 x £17903.15 = £53709.45 Mervyn's lump sum compensation = 6/12 x £38111.28 = £19055.64 All benefits are paid immediately. Option B Mervyn's annual compensation payment to pension age = £38111.28 x (34years 36 days + 3 years 176 days) x 1/80 = £17903.15 per year Mervyn's pension from pension age = £38111.28 x 34y 36d x 1/80 = £16244.27 per year Mervyn's annual compensation payment from pension age = £38111.28 x 3y 176d x 1/80 = £1658.89 per year Alternatively, Mervyn could take a lump sum instead of 12 x £1658.89 = £19906.68 Mervyn's tax-free lump sum payable at pension age = 3 x pension = 3 x £16244.27 = £48732.81 Mervyn's lump sum compensation payable at date of leaving: • Part 1 = 6/12 x £38111.28 = £19055.64 • Part 2 = 3/80 x £38111.28 x 3y 176d = £4976.67 • Part 3 = 3/80 x £38111.28 x 34y 36d x 0.106 (a factor based on Mervyn's age) = £5165.68 Total lump sum = £29197.99	**Redundancy Terms** The compensation payable depends on whether or not the redundancy is Voluntary or Compulsory as does whether or not the Employer offers buy out/top-up of the actuarial reduction to permit pension benefits to be paid early if the member is over the minimum pension age. Voluntary Redundancy (Compensation Scheme): Maximum compensation payment = 1 months pay for each year up to the maximum of 21 months. The employer must apply the protection for the lower paid and must offer buy out/top up of the actuarial reduction if member over minimum pension age. Compensation payment: (21 x £38,111.28) / 12 = £66,694.74 Voluntary Redundancy (Superannuation Bill): (15 x 38,111.28) / 12 = £47,639.10 Compulsory Redundancy (Compensation Scheme) Maximum compensation payment = 1 months pay for each year up to the maximum of 12 months. The Employer has no flexibility to offer buy out/top up of the actuarial reduction although member may choose to use compensation payment to do so but buy out must cover all the reduction. However protection for lower paid must be applied to the compensation payable. Compensation payment: (12 x £38,111.28) / 12 = £38,111.28 Compulsory Redundancy (Superannuation Bill): (12 x £38,111.28) / 12 = £38,111.28

= Compulsory Terms payable whether severance/redundancy scheme is voluntary or compulsory under existing terms of the CSCS (NI)

Annex 4

Principal Civil Service Pension Scheme (Northern Ireland) [PCSPS (NI)]

Summary of the Main Provisions of the Classic, Premium, Classic Plus and Nuvos arrangements of the Principal Civil Service Pension Scheme (Northern Ireland)

Provision	**Classic**	**Premium**	**Classic Plus**	**Nuvos**
Normal Pension Age	60	60	60	65
Member Contributions	1.5% of salary	3.5% of salary	3.5% of salary	3.5% of salary
Benefits on normal retirement	1/80th of pensionable earnings x years of service + lump sum of 3/80th pensionable earnings x years of service	1/60th of final pensionable earnings x years of service No automatic lump sum but members can commute pension for optional lump sum on basis of £1 of pension for each £12 of lump sum	Benefits calculated in 2 parts: A - Reckonable service up to 30 September 2002: 1/80th of pensionable earnings x years of service + lump sum of 3/80th pensionable earnings x years of service B - Reckonable service from 1 October 2002: 1/60th of final pensionable earnings x years of service No automatic lump sum but member can commute pension for optional lump sum on basis of £1 of pension for £12 of lump sum	Pension built up during contributing scheme years consisting of: A - Pensionable earnings x scheme build up rate applied during contributing scheme years (currently 2.3%) B - "Interest" (currently based on RPI but CPI from 2011) added to A at the end of year 1, then annually to A + B in subsequent years
Restrictions on pension benefits	45 years service	45 years service	45 years service	Benefits limited to a total of 75% of final pay

Provision	Classic	Premium	Classic Plus	Nuvos
Benefits on voluntary early retirement	Accrued pension and lump sum reduced for early payment	Accrued pension reduced for early payment	Accrued pension and lump sum reduced for early payment	Accrued pension reduced for early payment
Benefits on ill-health retirement	Immediate payment of benefits as on normal retirement but based on enhanced service if 5 years qualifying service completed	Two-tier approach (after completing 2 years qualifying service): Lower tier - immediate payment of accrued benefits (with enhancement for those under 10 years qualifying service) for those who cannot continue at their present level Upper tier – Immediate payment of benefits as on normal retirement but based on service enhanced to pension age for those who cannot work again	Immediate payment of benefits calculated as for normal retirement. Enhancement as for premium but added to service from 1 October 2002 only	Two-tier approach (after completing 2 years qualifying service): Lower tier - accrued benefits paid early without reduction or enhancement for those who cannot continue at their present level Upper tier – Immediate payment of benefits as on normal retirement but based on service enhanced to pension age for those who cannot work again

Provision	Classic	Premium	Classic Plus	Nuvos
Benefits payable on death in service	A -lump sum of 2 x pensionable earnings B - Spouse's/civil partner's pension 50% of member's pension payable on ill-health Only service from 1 July 1987 accrues for widowers' pensions. Only service from 6 April 1988 accrues for civil partners' pensions Certain short-term(up to 9 months) widows'/widowers'/ civil partners' pensions may be paid	A - Lump sum 3 x final pensionable earnings B - Spouse's/civil partner's/ partner's pension 3/8th rate of member's pension with service enhanced No short-term pension paid	A - Lump sum 3 x Final pensionable earnings B - Spouse's pension 50% of member's pension for service up to 30 September 2002 and 3/8th rate of member's pension for service (enhanced) from 1 October 2002 C - Civil partner's pension 50% of member's pension for service from 6 April 1988 to 30 September 2002 and 3/8th rate of member's pension for service (enhanced) from 1 October 2002 D - Partner's pension 3/8th rate of member's pension for service from 1 October 2002 No short-term pension paid	The greater of: A - 2 x final pay less any lump sums (pension lump sums and death lump sums) already paid and B - 5 x accrued pension, including any added pension, less any pension (but not lump sums) already paid from the nuvos section. C - Spouse's/civil partner's/ partner's (as defined in premium) of 37.5% x member's pension No short-term pension paid
Benefits on resignation	less than 2 years' qualifying service after 5 April 2006			
	Transfer value payment to another scheme or refund of members' contributions, less cost of buying back into State 2nd pension scheme	Transfer value payment to another scheme or refund of members' contributions, less cost of buying back into State 2nd pension scheme	Not applicable	If fewer than 3 months' contributing service an automatic refund of contributions. If between 3 months' and 2 years' qualifying service, choice of a transfer value payment to another scheme or refund of members' contributions, less cost of buying back into State 2nd pension scheme

Provision	Classic	Premium	Classic Plus	Nuvos
	2 or more years' qualifying service			
	Benefits preserved in scheme, increased in deferment and payable from pension age or transfer value payment to another scheme	Benefits preserved in scheme, increased in deferment and payable from pension age or transfer value payment to another scheme	Benefits preserved in scheme, increased in deferment and payable from pension age or transfer value payment to another scheme	Benefits preserved in scheme, increased in deferment and payable from pension age or transfer value payment to another scheme
Pensions Increase	Applied in line with increases in CPI from 2011	Applied in line with increases in CPI from 2011	Applied in line with increases in CPI from 2011	Applied in line with increases in CPI from 2011

CFP90 11-15 Superannuation follow up (Response)

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Mr Shane McAteer
Clerk
Committee for Finance and Personnel
Room 419
Parliament Buildings
Stormont

Our Ref –CFP90/11-15

21 March 2012

Dear Shane,

Please find attached update on the issues which arose at the Evidence Session on 7th March in relation to the Superannuation Bill.

Yours sincerely,

Norman Irwin

Response to the DFP Committee – Superannuation Bill

The Committee requested additional information on 3 issues following the pre-introductory briefing from the officials on 7 March 2012. These are listed below:

1. An analysis of the pros and cons of breaking from parity including costs of departing from the provisions which apply under the Superannuation Act 2010, in terms of having administration systems and structures in place as well as the cost of providing more favourable compensation benefits.

An analysis of the pros and cons of breaking parity are set out in the table overleaf.

If an IT system were required for the Northern Ireland Civil Service, the normal procurement processes would be engaged. However any business case is likely to fail as the current Service Level Agreement with Cabinet Office is extremely good value as the procurement and maintenance of the system is shared across the various civil service pension administrators based on their membership. Added to this, there would be additional legal and administrative costs as all aspects from initial policy development, consultation, drafting and making legislation together with the development of communication and guidance to employers and employees would be required.

It should be noted that before embarking on this course of action a full impact analysis would be required to determine a future service delivery model, as such a departure in terms of the Compensation Scheme may well impact on other aspects of pension provision. It would also be prudent to know whether or not such a departure was going to be enacted in terms of pension provision in Northern Ireland, given the direction which officials have received from the Executive in terms of the reform of the public service pension schemes in Northern Ireland following those in Great Britain.

Analysis of Pros & Cons of Breaking Parity with Great Britain

Pros	Cons
Local autonomy in decisions making in the administration of the scheme.	Variance across the civil service and perhaps across the public service which may attract criticism from HM Treasury.
The ability to have more/less favourable benefits for civil servants in Northern Ireland as compared with GB counterparts	The consequence to the public purse of providing more favourable terms to Northern Ireland civil servants - more details in the next section In example for **100** staff difference is in the region of **£5m.**
Possible increase in: Civil Service Pensions staffing, legislative expertise with input from legislative draftsmen (only valid if increase in Civil Service posts for administration and legal work was deemed an advantage).	Loss of draft scheme amendments and subsequent draft employer and employee communications, guidance, systems and procedures together with expertise and precedence from GB colleagues. Technical expertise would also be lost, for example, calculators and other online resources which are currently shared with GB Cabinet Office.
No delay in awaiting draft scheme amendments from GB Cabinet Office.	Loss of expertise from GB, Northern Ireland would no longer have precedents to follow from the wider Home Civil Service and would be required to draft all legislative changes and potentially would require our own Pension Ombudsman

Pros	Cons
Local Consultation with Trades Unions	Loss of the benefits of a central negotiating forum with trades unions and therefore consistency of approach across the public sector.

2. Comparative examples of the estimated compensation benefits under the current scheme compared with the new scheme, including for the various categories of employee.

The National Audit Office has recently published a report on Managing Early Departures in Central Government. www.nao.org.uk. This report looked at the period December 2010 to December 2011 and under the revised Compensation Scheme in this period the costs are around 45 per cent lower than they would have been under the previous scheme.

For estimated costs in Northern Ireland the Department has provided by way of example the differences to the public purse between the current scheme and the proposed scheme. These are purely indicative and as a number of variables apply they should not be transposed to any other person of similar circumstances, as minor differences can make a substantive difference to the quantum of awards. The Committee will note that the new scheme does favour the lower paid staff.

If these examples are extrapolated to say **100 people leaving** who would have left under a voluntary early severance (which typically had compulsory terms applying) the costs would be at least **£12 million** compared to **£7 million** under the new scheme and this would increase further as an additional compensation payment from normal retirement age would also be payable. This is a cost which would continue to be borne by Northern Ireland, mainly from DEL expenditure by the respective employing department.

The tables overleaf provide some illustrative examples.

2A. Summary of comparative figures for current and proposed compensation arrangements

Classic, classic plus and premium

	Current arrangements	**Proposed arrangements**
	Flexible Early Severance	**Voluntary Exit/Voluntary Redundancy**
Member aged 35 with 15 years reckonable service and final pensionable earnings of £20,000	Lump sum compensation= **£17,307**	Lump sum compensation= **£28,750**
Member aged 45 with 25 years reckonable service and pensionable earnings of £40,000	Lump sum compensation= **£73,076**	Lump sum compensation= **£70,000**

	Current arrangements	**Proposed arrangements**
	Flexible Early Retirement	**Voluntary Exit/Voluntary Redundancy**
Member aged 55 with 15 years reckonable service and final pensionable earnings of £20,000	A: Annual compensation payment to pension age = **£4,950** B: Lump sum compensation = **£5,299** Total payable = **£30,048**	Lump sum compensation= **£28750**
Member aged 55 with 30 years reckonable service and final pensionable earnings of £40,000	A: Annual compensation payment to pension age = **£17,400** B: Lump sum compensation = **£13,995** Total payable = **100,995**	Lump sum compensation= **£70,000**

	Compulsory Early Severance	**Compulsory Exit**
Member aged 35 with 15 years reckonable service and final pensionable earnings of £20,000	Lump sum compensation = **£33,333**	Lump sum compensation =**£23000**
Member aged 45 with 25 years reckonable service and pensionable earnings of £40,000	Lump sum compensation = **£120,000**	Lump sum compensation = **£40,000**

	Current arrangements	**Proposed arrangements**
	Compulsory Early Retirement	Compulsory Exit
Member aged 55 with 15 years reckonable service and final pensionable earnings of £20,000	A: Annual compensation payment to pension age = **£4,950** B: Lump sum compensation = **£15,299** Total payable = **£40,049**	Lump sum compensation = **£23000**
Member aged 55 with 30 years reckonable service and final pensionable earnings of £40,000	A: Annual compensation payment to pension age = **£17,400** B: Lump sum compensation = **£33995** Total payable = **£120,995**	Lump sum compensation = **£40,000**

It should be noted that the members above who are over age 50 will also receive a further additional compensation payment from pension age which is equivalent to the enhanced element of the member's benefits.

This is not costed above as the benefits payable will depend on the longevity of the member.

For comparison purposes if a Department had a voluntary redundancy exercise which included 100 members of staff aged approximately age 55 and with 30 years the cost under the current scheme the cost would be over £12 million. However, under the proposed

revised scheme the scheme cost would be £7 million with a saving of approximately £5 million.

Nuvos

Nuvos was introduced in July 2007 and is not yet covered under the rules of the Civil Service Compensation Scheme (Northern Ireland). Under interim arrangements members of nuvos who leave on voluntary or compulsory redundancy are entitled receive an ex gratia payment 1 month pay for each year of service. This is the equivalent to the proposed terms.

2B. Detailed calculations of comparative figures provided in previous table (2A)

	Current arrangements	**Proposed arrangements**
	Flexible Early Severance	**Voluntary Exit/Voluntary Redundancy**
Member aged 35 with 15 years reckonable service and final pensionable earnings of £20,000	A:2 weeks final pensionable earnings for each year of reckonable service during the first 5 years of qualifying service = **£38,46** B: 3 weeks final pensionable earnings for each year of reckonable service during the next 5 years of qualifying service = **£5,769** C: 4 weeks final pensionable earnings for each year of reckonable service after the first 10 years of qualifying service = £7,692 A+B+C = **£17,307**	1 month pay for each year of service up to a maximum of 21 months. Lower Pay protection applies – salary deemed to be **£23,000.** = **£28,750**
Member aged 45 with 25 years reckonable service and pensionable earnings of £40,000	A:2 weeks final pensionable earnings for each year of reckonable service during the first 5 years of qualifying service = **£7692** B: 3 weeks final pensionable earnings for each year of reckonable service during the next 5 years of qualifying service = **£11,538** C: 4 weeks final pensionable earnings for each year of reckonable service after the first 10 years of qualifying service = **£46,154** D: 2 weeks final pensionable earnings for each year of reckonable service after age 40 = **£7,692** A+B+C+D = **£73,076**	1 month pay for each year of service up to a maximum of 21 months = **£70,000**

	Current arrangements	**Proposed arrangements**
	Flexible Early Retirement	**Voluntary Exit/Voluntary Redundancy**
Member aged 55 with 15 years reckonable service and final pensionable earnings of £20,000	Annual compensation payment (ACP)equivalent to enhanced pension until pension age and from pension age an annual compensation payment reduced to the amount of enhancement A: ACP to pension age = **£4950** B: Lump sum compensation = **£5,298** Total cost = **£30,048**	1 month pay for each year of service up to a maximum of 21 months. Lower Pay protection applies – salary deemed to be £23,000. = **£28750**
Member aged 55 with 30 years reckonable service and final pensionable earnings of £40,000	Annual compensation payment (ACP)equivalent to enhanced pension until pension age and from pension age an annual compensation payment reduced to the amount of enhancement A: ACP to pension age = **£17,400** B: Lump sum compensation = **£33,995** Total cost = **£120,995**	1 month pay for each year of service up to a maximum of 21 months = **£70,00**

	Current arrangements	**Proposed arrangements**
	Compulsory Early Severance	**Compulsory Exit**
Member aged 35 with 15 years reckonable service and final pensionable earnings of £20,000	A: 1 month final pensionable earnings for each year of reckonable service = **£25,000** B:1 month final pensionable earnings for each year of reckonable service after age 30 = **£8,333** A+B = **£33,333**	1 month pay for each year of service up to a maximum of 12 months. Lower Pay protection applies – salary deemed to be £23,000. = **£23,000**
Member aged 45 with 25 years reckonable service and pensionable earnings of £40,000	A: 1 month final pensionable earnings for each year of reckonable service = **£83333** B:1 month final pensionable earnings for each year of reckonable service after age 30 = **£50000** C: 1 month final pensionable earnings for each year of reckonable service after age 35 = **£33,333** A+B+C=£167,0000 (limited to maximum of 3 years final pensionable earnings = **£120,000**	1 month pay for each year of service up to a maximum of 12 months = **£40,000**

	Current arrangements	**Proposed arrangements**
	Compulsory Early Retirement	**Compulsory Exit**
Member aged 55 with 15 years reckonable service and final pensionable earnings of £20,000	Annual compensation payment (ACP)equivalent to enhanced pension until pension age and from pension age an annual compensation payment reduced to the amount of enhancement A: ACP to pension age = **£4,950** C: Lump sum compensation = **£15,299** Total = **40,049**	1 month pay for each year of service up to a maximum of 12 months. Lower Pay protection applies – salary deemed to be £23,000. = **£23,000**
Member aged 55 with 30 years reckonable service and final pensionable earnings of £40,000	Annual compensation payment (ACP)equivalent to enhanced pension until pension age and from pension age an annual compensation payment reduced to the amount of enhancement A: ACP to pension age = **£17,400** C: Lump sum compensation = **£33,995** Total = **120,995**	1 month pay for each year of service up to a maximum of 12 months = **£40,000**

3. Department's view as to whether provision could be added to the Superannuation Bill to amend the Superannuation (Northern Ireland) Order 1972 to require scheme amendments to be subject to Assembly procedure, which is the usual practice for subordinate legislation.

Yes. In terms of the legal process, provision could be added to the Superannuation Bill to amend the Superannuation (Northern Ireland) Order 1972 to require scheme amendments to be subject to Assembly procedure, for subordinate legislation in respect of the Principal Civil Service Pension Scheme (Northern Ireland).

Superannuation Bill 2011 & EFM

Superannuation Bill

[AS INTRODUCED]

CONTENTS

1. Consents required for civil service compensation scheme modifications
2. Consultation in relation to civil service compensation scheme modifications
3. Interpretation
4. Short title and commencement

A

BILL

TO

Make provision for and in connection with limiting the value of the benefits which may be provided under so much of any scheme under Article 3 of the Superannuation (Northern Ireland) Order 1972 as provides by virtue of Article 4(2) of that Order for benefits to be provided by way of compensation to or in respect of persons who suffer loss of office or employment; and to make provision about the procedure for modifying such a scheme.

BE IT ENACTED by being passed by the Northern Ireland Assembly and assented to by Her Majesty as follows:

Consents required for civil service compensation scheme modifications

1.—(1) Article 4 of the 1972 Order shall be amended as follows.

(2) In paragraph (3), at the beginning there shall be inserted the words "Subject to paragraph (3A),".

(3) After paragraph (3) there shall be inserted the following paragraphs—

"(3A) Paragraph (3) does not apply to a provision which would have the effect of reducing the amount of a compensation benefit except in so far as the compensation benefit is one provided in respect of a loss of office or employment which is the consequence of—

(a) a notice of dismissal given before the coming into operation of the scheme which would have that effect, or

(b) an agreement made before the coming into operation of that scheme.

(3B) In this Article—

"compensation benefit" means so much of any pension, allowance or gratuity as is provided under the civil service compensation scheme by way of compensation to or in respect of a person by reason only of the person's having suffered a loss of office or employment;

"the civil service compensation scheme" means so much of any scheme under Article 3 (whenever made) as provides by virtue of paragraph (2) for benefits to be provided by way of compensation to or in respect of persons who suffer loss of office or employment.

(3C) In paragraph (3B) a reference to suffering loss of office or employment includes a reference to suffering loss or diminution of emoluments as a consequence of suffering loss of office or employment.".

(4) The amendments made by this section apply in relation to reductions to which effect is given by a scheme made under Article 3 of the 1972 Order after the commencement of this section.

(5) Subsection (6) applies if—

(a) a scheme under Article 3 of the 1972 Order is made after the commencement of this section, and

(b) consultation on the proposed scheme took place to any extent before the commencement of this section.

(6) The fact that the amendments made by this section were not in force when the consultation took place does not affect the question whether the consultation satisfied the requirements of Article 3 of the 1972 Order.

Consultation in relation to civil service compensation scheme modifications

2.—(1) Article 4 of the 1972 Order shall be amended as follows.

(2) After paragraph (3C) (inserted by section 1) there shall be inserted the following paragraph—

"(3D) So far as it relates to a provision of a scheme under Article 3 which would have the effect of reducing the amount of a compensation benefit, the duty to consult in paragraph (2) of that Article is a duty to consult with a view to reaching agreement with the persons consulted.".

(3) After paragraph (8) there shall be inserted the following paragraphs—

"(8A) Paragraph (8B) applies if a scheme made under Article 3 makes any provision which would have the effect of reducing the amount of a compensation benefit.

(8B) Before the scheme comes into operation, the Department must have laid before the Assembly a report providing information about—

(a) the consultation that took place for the purposes of Article 3(2), so far as relating to the provision,

(b) the steps taken in connection with that consultation with a view to reaching agreement in relation to the provision with the persons consulted, and

(c) whether such agreement has been reached.".

(4) The amendments made by this section apply in relation to reductions to which effect is given by a scheme made under Article 3 of the 1972 Order after the commencement of this section.

Superannuation

Interpretation

3. In this Act "the 1972 Order" means the Superannuation (Northern Ireland) Order 1972.

Short title and commencement

4.—(1) This Act may be cited as the Superannuation Act (Northern Ireland) 2012.

(2) Section 2 comes into operation one month after the day on which this Act receives Royal Assent.

(3) Except as provided by subsection (2), this Act comes into operation on Royal Assent.

DFP Minister Response Trade Union

From the Office of the
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Your reference:

Our reference: COR/189/2012

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24 April 2012

Dear Conor

Thank you for your letter of 2 April 2012 which raised the issue of the Department's engagement with trade unions on the provisions of the Superannuation Bill.

The Department of Finance and Personnel has been engaging in informal consultation with trade unions on the Superannuation Bill since October 2011.

In October 2011 the Department of Finance and Personnel established a Pensions Forum with the aim of engagement and consultation between civil service management side and trade union side (TUS) on pension and compensation reform issues affecting NICS employees. At the first meeting of the Forum held on 25 October 2011 TUS proposed that the Forum should be used as an informal arena for information sharing on pension and compensation reform. This was agreed to by Management Side. My officials will now review the efficacy of the Pensions Forum and liaise with TUS with the intention that it be re-constituted on a more formal basis specific to consultation on pension and compensation scheme reforms.

The Superannuation Bill has been discussed at each meeting of the Pensions Forum held on 25 October 2011, 12 December 2011 and 14 March 2012. Further meetings of the Pension Forum have been scheduled for 16 April 2012, 15 May 2012 and 19 June 2012. At the next meeting Departmental officials will propose a further meeting is dedicated to consultation on the clauses of the Bill.

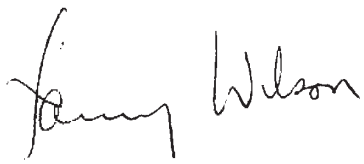
The Northern Ireland Civil Service trade unions have also had direct input to the central process for policy consultation on the provisions of the Superannuation Bill as introduced in Great Britain in December 2010 through their representation on the Council of Civil Service Unions of which both NIPSA and FDA were members. The Council was involved in central negotiations with HM Treasury and the Cabinet Office on the reform of Home Civil Service compensation arrangements.

The Department wrote directly to trade unions on 1 March 2012 to inform TUS of the Executive decision taken on 23 February 2012 to introduce the Bill in

the Assembly. A copy of the draft Bill was provided to TUS at this time. TUS was also informed at this time of the Department's intention to initiate formal consultation with trade unions on draft secondary legislation which will amend the rules of the compensation scheme, as is required under Article 3(2) of the Superannuation (Northern Ireland) Order, and as is the normal procedure. My Departmental officials raised the issue of consultation on proposed secondary legislation at the meeting of the Pensions Forum on 16 April 2012.

Officials will provide a further update on the outcome of these consultations in due course.

Yours sincerely



SAMMY WILSON MP MLA

DFP Superannuation Bill Response to Evidence

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Our Ref – CFP118/11-15

21 June 2012

Dear Shane,

Superannuation Bill

I refer to your letter of 25 May seeking clarification on issues raised to date for evidence received by the Committee.

A list of the main issues to be addressed and the Department's response is set out below.

What consideration has the Department given to carrying out a consultation and full equality impact assessment on proposals for reform of the Civil Service Compensation Scheme (Northern Ireland)?

The Department has a statutory duty under Article 3(2) of the Superannuation (Northern Ireland) Order 1972 to engage in consultation with representatives of persons likely to be affected by changes to pension and compensation schemes before changes are made. It will formally consult with Trade Unions on proposed legislation to amend the compensation scheme in line with this requirement. The Superannuation Bill would not change this statutory duty.

The Northern Ireland Civil Service generally operates pension and compensation scheme arrangements on the basis of parity with Great Britain. Proposals to reform the Civil Service Compensation Scheme (Northern Ireland) will align the rules of the scheme with changes already made to the rules of the Civil Service Compensation Scheme for the Home Civil Service. As the central purpose of proposed reforms to the compensation scheme is to maintain the long standing principle of parity with the Home Civil Service the Department does not consider a full public consultation on the proposals is required. Trade unions representing the Northern Ireland Civil Service and associated employments covered by the PCSPS(NI) arrangements (including NIPSA, FDA and POA) which were represented on the Council of Civil Service Unions were involved in central negotiations with HM Treasury and the Cabinet Office on the equivalent reforms of Home Civil Service compensation arrangements prior to their implementation in 2010.

In October 2011, the Department established a Pensions Forum between civil service management side and trade union side for engagement and consultation on the prospective changes to pensions and compensation arrangements in respect of the Northern Ireland Civil Service and associated employments covered by the PCSPS (NI) arrangements. Whereas, at trade unions request, this forum has to date been engaged in information sharing, the Forum has

now been formally reconstituted to enable full consultation on matters relating to pensions and compensation scheme reforms with the aim of reaching agreement on any changes.

The Superannuation Bill has been discussed at each meeting of the Pensions Forum held on 25 October 2011, 12 December 2011, 14 March 2012, 16 April 2012 and 15 May 2012. The Department provided trade unions with a copy of the draft Bill on 1 March 2012. In advance of the meeting on 19 June 2012 Trade Union Side were provided with The Superannuation Bill, The Superannuation Order (Northern Ireland) 1972 (with proposed amendments referenced in red) and briefing by way of an explanation of each clause of the Bill to inform discussions. Trade Union Side were not in a position to engage fully in discussions on the clauses at this meeting and a further meeting is now planned for 9 July to enable full clause by clause consultation.

The Committee has heard oral evidence from members of the Pensions Forum, during which trade unions expressed the view that proposed changes to the Compensation Scheme that are planned to follow this Bill, and already implemented in the Home Civil Service, are part of a general austerity programme. They have stated that they have been, and are still supportive, in many respects of the parity approach and have pointed out whereas there is no exact parity in relation to civil service pay there has generally been parity in relation to pensions and compensation.

The trade unions' view is that in terms and conditions of employment they generally argue for no detriment. It is for that very reason that the proposed clauses in the Superannuation Bill are required. The situation where trade unions have a 'veto' to any changes which can have detrimental impact on the terms of the scheme is not conducive to progressing the changes required to address age discrimination vulnerabilities and to demonstrate responsible use of public funds.

The Department intends to conduct an equality screening exercise on proposals for reform of the Civil Service Compensation Scheme (Northern Ireland). The outcome of the equality screening exercise will determine if a full equality impact assessment is required.

What consideration has the Department given to ensuring compliance with the age equality legislation, namely the Employment Equality (Age) Regulations (NI) 2006?

In July 2009, when the Labour Government published its consultation document setting out reform proposals for compensation arrangements for the Home Civil Service (Fairness for All – Proposals for Reform of the Civil Service Compensation Scheme) a key principle of the original proposals, and one which has been carried forward from then by the Coalition Government, has been to ensure that the terms of the Compensation Scheme are not age discriminatory. It was accepted by Government and Trade Unions that the Home Civil Service scheme had to be reformed to comply with age equality legislation made in the Employment Equality (Age) Regulations 2006. The schemes for the NHS, local government and teachers also have been reformed in recent years, partly to address any provisions that might contravene age discrimination legislation. The Government regards the terms of the new Compensation Scheme for the Home Civil Service introduced on 22 December 2010 to be in compliance with the age equality regulations applying in Great Britain. The proposed changes to the Civil Service Compensation Scheme (Northern Ireland) replicate those changes for the Civil Service Compensation Scheme in the Home Civil Service and the Department is of the opinion that the proposed changes comply with the Employment Equality (Age) Regulations (Northern Ireland) 2006 which apply in Northern Ireland.

As the Bill will facilitate detrimental changes to the Compensation Scheme, what consideration has DFP given to publishing the draft scheme amendments and associated impact assessments at this stage and to inform deliberations on the implications of the Bill provisions?

The Department has not considered publishing draft amendments and impact assessments until the Superannuation Bill has completed its passage in the Assembly and the content is finalised. The Department has and continues to use the Pensions Forum as a properly constituted body for consultation with Trade Union Side on the implications of the proposed Bill provisions. The Department's remit is to maintain parity with changes made

to compensation arrangements for the the Home Civil Service on this matter. Northern Ireland trade unions (including NIPSA, FDA and the Prison Officers Association (POA) were represented on the Council of Civil Service Unions and were involved at decision making stages in central negotiations with HM Treasury and the Cabinet Office on the amendments to the Home Civil Service compensation arrangements during 2009/10, the results of which are in the public domain and published in the rules of the Home Civil Service Compensation Scheme.

What detailed analysis has DFP undertaken of the human rights considerations associated with the Bill in the Northern Ireland context (i.e. beyond the outline provided at paragraph 9 of the Explanatory and Financial Memorandum) and can this be provided to the Committee?

In its written submission to the Committee the Northern Ireland Human Rights Commission states that the proposal to remove the duty to seek trade union consent risks regression in the protection of the following rights:

- the right to form and join trade unions for the promotion and protection of economic and social interests – Article 8, International Covenant on Economic, Social and Cultural Rights;
- the Labour Relations (Public Service) Convention, International Labour Organisation, Convention No. 151;
- the right to organise and to join organisations for the protection and promotion of economic and social interests – Article 5, European Social Charter; and.
- the right to collective bargaining – Article 6, European Social Charter.

The Department has consulted with the Department Solicitor's Office on these issues and it has advised that these rights are not interfered with by the clauses in the Superannuation Bill. The Bill does nothing to interfere with the right to form a union and actually imposes a duty on the Department to consult with the union with a view to reaching agreement. It also contains the additional safeguard that the Department must report to the Assembly on the consultation undertaken, the steps taken to try to secure agreement and whether such agreement was reached. It is the view of the Department Solicitor's Office that the removal of the union veto to changes to the compensation scheme does not pose a significant risk of a successful challenge to the Bill on human rights grounds.

In the case taken by the Public and Commercial Services Union v Minister for the Civil Service (the case referred to by the NIHRC) the union sought (unsuccessfully) to argue that the corresponding provisions to those in the Bill introduced in England by the Superannuation Act 2010 amounted to a violation of Article 11 of the European Convention on Human Rights. Article 11 provides for the right to freedom of peaceful assembly and freedom of association including the right to form and join trade unions. In what the judge described as "a surprising submission", the claimants argued that the Old Scheme represented the product of collective bargaining and that by amending section 2(3) of the Superannuation Act 1972 and using the amended Act to set aside the Old Scheme, the defendant had nullified the collective agreement that it represented, which amounted to a violation of Article 11. The judge dismissed this submission in very clear terms as follows:-

> *"In the present case, the unions remain fully active and recognised in representing their members' interests in negotiations with the employer. Collective bargaining continues. Even with regard to this scheme there was negotiation with all unions and agreement with the majority of them. This case simply gets nowhere close to a situation where the right to freedom of assembly and association is infringed."*

Whilst it is true that this decision of the High Court in England is technically not binding in NI, the Department Solicitor's Office is of the view that in reality it would almost certainly be followed by the courts in this jurisdiction.

What consideration has DFP given to the potential implications of this distinction between the position in Whitehall with that in Northern Ireland in terms of striking the right balance between the socio-economic interest and legitimate human rights considerations?

In evidence to the Committee on 9 May 2012 the Northern Ireland Human Rights Commission has referred to the claim taken by the Public and Commercial Services Union on grounds that rights to redundancy pay and the compensation scheme for the Home Civil Service amounted to 'possessions' and that changes made to the scheme were an interference with those possessions under protocol 1 of the European Convention on Human Rights (ECHR). In that case the union's claim was dismissed. The High Court ruled on 10 August 2011 that the Coalition Government's actions to reform compensation arrangements for the Home Civil Service were proportionate in pursuit of a legitimate aim, being the reduction of the national deficit. The test that was applied in that case was not whether an interference to protected rights had occurred but whether an interference with rights to possessions could be proportionally justified and whether a fair balance had been struck between the persons affected and the community as a whole?

The Northern Ireland Human Rights Commission has argued that socio-economic conditions in Northern Ireland could result in a different outcome if the test of proportionality were to be applied here. The Department considers that breaking parity on this issue would have serious financial consequences in terms of funding from the Northern Ireland block grant. The Coalition Government is committed to the policy that public service superannuation costs should be controlled across the United Kingdom as part of its strategy to reduce the national deficit. The block grant will not be increased to take account of additional finances required in order to continue funding more generous compensation arrangements for civil servants in Northern Ireland, compared to those now available to civil servants in others parts of the United Kingdom. The ring-fencing of a proportion of the finite funds available to Northern Ireland through the block grant in order to maintain the current arrangements would impact on the Northern Ireland Executive's ability to fund its wider range of programmes. For these reasons the Department is of the view that the socio-economic situation facing the people of Northern Ireland, and the necessity to create savings to the public purse, is the same as that which applies in Great Britain and in the event of a claim being made under protocol 1 of the European Convention on Human Rights that changes to compensation arrangements constitute an interference to a right to possessions, any interference can be justified in light of the effect for the community as a whole.

The House of Commons commissioned the National Audit Office to report on the management of 'early departures' of staff in central government in Great Britain. The study examined the potential for government departments to achieve savings from early departures over the period of the spending review; and to sustain value-for-money savings over the longer term. The report published on 15 March 2012 found that central government departments have spent around £600 million gross on the early departures of 17,800 staff in the year from December 2010. These costs are around 45 per cent lower than they would have been under the previous scheme. After meeting the initial costs, departments will save an estimated £400m a year on the paybill.

In relation to the CIPD submission, DFP is asked to comment on the paper and the comparisons between the civil service, private sector and the wider public sector.

The Department has noted the comments from the CIPD, which are applicable to proposals for the revised Compensation Scheme rather than the terms of the Superannuation Bill, and would highlight the following general comments made:

> *"When it comes to costs, an organisation needs to consider how generous they can afford to be. This will inevitably depend on the circumstances it faces."*
>
> *and,*
>
> *"Within the public sector, a potential major concern may revolve around not wishing to be seen as too generous with tax payers' money…"*

These points are particularly valid as all compensation payments and enhanced pensions entitlements incur a charge against employers' Departmental Expenditure Limit budgets and there is little need to rehearse the impact the national deficit has on budgets.

> *"…consider how its own redundancy package compares with those being offered by other organisations."*
>
> *and,*
>
> *"With regard to the proposed changes, the new NICSS [Civil Service Compensation Scheme (NI)] will be more generous than many private sector employees could expect to enjoy"*

An obvious comparable organisation would be the Compensation Schemes currently in operation for Civil Service staff in England, Scotland and Wales, which the NICS has mirrored over many decades until the introduction of revised terms in 2010.

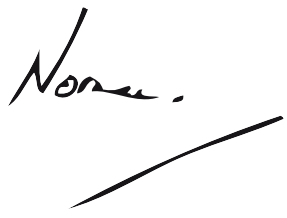
It is worth noting that the proposed reform of the Compensation Scheme is proportionate and fair in that it protects the lower paid and restricts payments to the higher paid. If a member earns less than £23,000, they will be treated as if they earn that amount for compensation payment purposes and if the member earns more than £149,820, they will be treated as if they earn that amount for compensation payment purposes.

In relation to the other public sector pension schemes, for example, the Northern Ireland Teachers' Pension Scheme and the Health and Social Care Pension Scheme (Northern Ireland), each mirror their respective pension schemes in Great Britain, and have recently reformed their early retirement arrangements to make employers directly responsible for the extra cost of early retirement. Also, additional service credits have been withdrawn. These reforms were driven by the need to comply with age discrimination legislation. There are also provisions created to allow employers to make discretionary compensation payments for termination of employment at an optimum amount of 90 to 104 weeks respectively for each of the schemes.

The Department would point out that the Superannuation Act 1972 extends to all Home Civil Service employments including those in the devolved administrations in Scotland and Wales and to those Home Civil Servants working in Northern Ireland. Only the Northern Ireland Executive has devolved responsibility for superannuation provisions for the Northern Ireland Civil Service, which is made in the Superannuation (Northern Ireland) Order 1972.

Officials will be available on the 4th July to provide further clarification.

Yours sincerely,



Norman Irwin

DFP Superannuation Bill Response to Research Paper

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Our Ref –CFP111/11-15

21 June 2012

Dear Shane,

In your reponse to your letter of 4 May 2012 the following paragraphs outline the Department's views on the issues raised in the Assembly Research Paper "Consultation: legal requirements and good practice."

Is the drafting of the Bill sufficiently clear? Does the requirement to consult sit comfortably with the aim of reaching agreement?

The Bill has been drafted by the Office of Legislative Counsel under instruction from the Department. Instructions were prepared with the objective that the Bill should contain equivalent provisions to those which were introduced by the Superannuation Act 2010 in Great Britain amending the provisions of the Superannuation Act 1972. These include provisions to remove the requirement for Trade Unions consent to detrimental changes to be made to the Civil Service Compensation Scheme (Northern Ireland) and a new requirement to report on the consultation the Department has engaged in with trade unions with the aim of reaching agreement on detrimental changes. The Office of Legislative Counsel is of the opinion that the Bill is legislatively correct and clear in its objectives.

It is outlined in the NI Assembly Research and Information Service Research Paper 69/12 that Government departments may not technically be subject to the requirements of the Information and Consultation of Employees Regulations (Northern Ireland) 2005 ("the ICE Regulations"). The Department would nevertheless maintain that it adheres to principles of best practice conveyed in these regulations, i.e that 'consultation' should constitute an exchange of views and a two-way process of dialogue and discussion. In line with the existing statutory requirement contained at Article 3(2) of the Superannuation (Northern Ireland) Order 1972 the Department routinely consults with civil service unions on all proposed amendments to the Northern Ireland Civil Service pension and compensation arrangements. The Department has brought 39 amendments to Northern Ireland Civil Service pension and compensation arrangements since 2005 and in each case it has written to the trade unions inviting any comments or questions on the proposed changes. Trade unions have responded on one occasion.

This lack of response on previous changes to the arrangements can in part be attributable to tacit acceptance by unions of a principle of parity which operates between the Northern Ireland Civil Service and the Home Civil Service on pension and compensation arrangements, as long as there is no detriment to union members. This view was expressed by union officials in evidence to the Committee (Official Report 27/03/12). It does not diminish the fact that the Department has and continues to engage constructively on proposed changes.

The Department accepts that the reform of compensation arrangements for civil servants is contentious. In October 2011 the Department of Finance and Personnel established a Pensions Forum between civil service management side and trade union side for engagement and consultation on the prospective changes to public sector pensions in respect of Northern Ireland Civil Service employees and associated employees covered by the PCSPS (NI) arrangements. At the first meeting of the Forum held on 25 October 2011 trade unions proposed that the Forum should be used as an informal arena for information sharing on pension and compensation reform. The Department has since liaised with trade union side on a draft Terms of Reference that re-constitute the Pensions Forum as the primary method of formal consultation between Management Side and Trade Union Side on matters related to pension and compensation scheme reforms **with the aim of reaching agreement on any changes**. The Terms of Reference were formally agreed and signed on 21 June 2012.

Where agreement does not follow as a result of consultation this does not mean there has not been meaningful consultation on proposals for reform of compensation arrangements. NIPSA, FDA and Prison Officers' Association (POA) have each had direct input to the central process for policy consultation and negotiation on the provisions of the Superannuation Bill as introduced in Great Britain in December 2010 through their representation on the Council of Civil Service Unions. This council was involved in central negotiations with HM Treasury and the Cabinet Office on the then proposed reform of Home Civil Service compensation arrangements.

Does the absence of a specified timeframe for consultation create a risk that the consultation may not be conducted properly?

The existing statutory requirement contained at Article 3(2) of the Superannuation (Northern Ireland) Order 1972 for consultation with trade unions representing civil servants does not specify a timeframe for consultation to take place. To date the Department consults with trade unions on pension and compensation scheme amendments without recourse to formal regulations.

For example, the Department consulted on the proposals to increase employee contribution rates to the Principal Civil Service Pensions Scheme from 17 October 2011 until 13 January 2012. As well as issuing the consultation document to employers and their employees the major NICS Trades Unions including Northern Ireland Public Service Alliance (NIPSA), Industrial Trades Unions and the FDA, were also issued with copies. On 3 February the Department issued a detailed response which included the Key Findings, Conclusion and Next Steps.

Simultaneously, the above groups were also issued with updates on the various stages of the proposed pension reform almost immediately following their availability which included Executive decisions and informative material including a copy of the Proposed Final Agreement which outlined the core provisions of the 2015 revised Home Civil Service pension scheme.

Is the Committee content with the proposed reporting duty or should it be strengthened?

The Bill proposes equivalent reporting duties as those which have already been introduced by the Superannuation Bill 2010 in Great Britain.

Should the Bill specify that the consultation must take place at a time when proposals in GB are still at a formative stage?

It should be noted that proposals are **not** at a formative stage in Great Britain. These changes have been in place with effect regarding the Superannuation Act and the Compensation Scheme from December 2010 in Great Britain.

The proposal for the detrimental change in the Superannuation Order relates only to the Compensation Scheme.

The Department's current policy is to communicate information to Northern Ireland Civil Service staff and trade unions at the earliest opportunity on any proposed changes to the Home Civil Service pension and compensation arrangements in Great Britain which could have an impact on the arrangements for the Northern Ireland Civil Service. The guiding

principle of the Pensions Forum as stated in its Terms of Reference is to engage effectively with Trade Union Side, representative of all employee groups in the Northern Ireland Civil Service, at the earliest opportunity and at the most appropriate level. Northern Ireland Civil Service unions represented on the Council of Civil Service Unions were involved in central negotiations with HM Treasury and the Cabinet Office on proposed reform of Home Civil Service compensation arrangements in 2009/10. The Council of Civil Service Unions has since been dissolved. However during 2011 the seven nationally recognised trade unions in the civil service (PCS, POA, Prospect, FDA, NIPSA, Unite and GMB) agreed to join the new National Trade Union Committee. This decision allows these unions to co-ordinate consultation and negotiation with government.

Is there any value in creating a duty to report on the consultation to the Assembly in the absence of Assembly control over any amended NICSC Scheme?

Northern Ireland Civil Service unions represented on the Council of Civil Service Unions were involved in central negotiations with HM Treasury and the Cabinet Office on proposed reform of Home Civil Service compensation arrangements in prior to their implementation in 2010.

The requirement in the Bill imposes a duty on the Department to consult with the unions and contains an additional safeguard that the Department must report to the Assembly on the consultation undertaken, the steps taken to try to secure agreement and whether such agreement has been reached.

Clause 2 of the Superannuation Bill introduces a requirement for the Department to lay before the Assembly a report on the consultation relating to such a provision before the scheme comes into operation, and specifies what that report must include. This requirement mirrors that of the Home Civil Service Superannuation Bill.

CSP officials have a duty to demonstrate that they have consulted with a view to reaching agreement on any provision of the scheme made under Article 3 of the 1972 Order that would reduce the amount of a compensation benefit. The report therefore would demonstrate the Department's commitment to this transparent process.

Does the absence of a specified timeframe for consultation create a risk that the consultation may not be conducted properly?

This issue has already been addressed at Point 2.

Is the Committee content that consultation under the Superannuation Bill may be taken into account by DFP? In the context of parity, could such consultation influence the outcome?

The proposed requirement is that consultation takes place with the aim of reaching agreement on any proposed detrimental change to the compensation scheme. The result of this consultation would be considered with other factors including issues of parity in influencing outcomes.

Officials are due to give further evidence to the Committee on the 4 July.

Yours sincerely,

Norman Irwin

Follow-up from Superannuation Session 4 July 2012

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Our Ref –CFP136/11-15

25 July 2012

Response to the DFP Committee – Superannuation Bill

Dear Shane,

Following the Evidence Session on 4th July in relation to the Superannuation Bill it was agreed that officials would provide written comments on the various issues and copies of the Judicial Review and the Pensions Forum's "Terms of Reference". The comments and views of the Department are set out below and the relevant documents are attached.

As stated in the Evidence Session, you may wish to note that the Department will not be preparing any amendment to the proposed Clauses of the Superannuation Bill and the rationale behind this is set out below.

Clause 1 - Removes the Trade Union Veto.

The Committee queried whether the union veto applied to the other schemes. It should also be noted that the other Northern Ireland public sector schemes (Teachers, Health Service staff, etc) do not have a union veto in their legislation. Under Articles 9, 11 and 12 of the Superannuation (Northern Ireland) Order 1972 these schemes are only required to consult with representatives before they make provision with respect to pensions, allowances or gratuities. The removing of the trade union veto in the Civil Service Scheme is only in respect of the gratuities in the Compensation Scheme and will remain for all other superannuation arrangements.

The Committee raised the issue of changing the way secondary legislation is made (i.e. by scheme amendment) for the Principal Civil Service Pension Scheme in Northern Ireland. It may be helpful to understand the historical context behind this development. The subordinate legislation process for the Department of Finance and Personnel relates back to the review of the superannuation arrangements that commenced in 1968 in Great Britain. The 1972 Superannuation Act in Great Britain was established as a result of the Joint Superannuation Committee of the National Whitley Council. In 1968, this Committee was set up to review the superannuation arrangements for the civil service. The review followed from the report of the Committee on the Civil Service (the Fulton Committee) which recommended wider changes to the civil service. The Fulton Committee recommended that any superannuation arrangements should not be set out in primary legislation. Both Management and Trade Union sides of the Whitley Council agreed. The Joint Superannuation Committee produced a report in February

1972. It agreed this approach that benefits should no longer be a matter of discretion. The government said that it had never abused the discretion that it theoretically had and the Staff Side agreed benefits had always been awarded as a matter of course. The Committee felt that it was wrong in principle that benefits should appear to be discretionary but rather they should be mandatory. The Joint Committee recognised that there were some instances where it would be in the interests of the civil servant that the benefits would be, theoretically if not in practice, discretionary for tax purposes. The benefits singled out, where it would be in the interest of the civil servant for the benefit to be discretionary were death benefits, some gratuities, injury benefits and premature retirement benefits.

This then established the legislative framework and removed the discretion for paying benefits. From 1972 new schemes were removed from Primary Legislation and "promulgated by administrative act of the relevant Minister".

The Joint Committee also recognised that moving from an arrangement where benefits were the subject of Parliamentary decision to arrangements where benefits were to be set out in a scheme made by a Minister was potentially to the disadvantage of civil servants. That had already been discussed by the trade unions and the Government and as the report records the Government had agreed to four important safeguards in 1972.

- First, any amendment to the scheme would require genuine consultation with "staff interests" meaning the National Whitley Council.
- Secondly, "staff representatives" would have to agree to any worsening to pensions in payment or pension rights already accrued.
- Thirdly, the Bill allowed the scheme to give a legal entitlement to benefits.
- Finally, any scheme would have to be laid before Parliament (even if Parliamentary approval was not required).

These changes formed the basis of the 1972 Superannuation Act in Great Britain and subsequently the 1972 Superannuation Order in Northern Ireland.

Under the new arrangements proposed, the first of these safeguards will be strengthened in that a report detailing the steps taken to secure agreement with the unions is to be laid in the Assembly. This will, as indicated in the debate in the Assembly earlier this year, be subject to the usual scrutiny. The legislation in Northern Ireland to date has mirrored the approach taken in the Home Civil Service.

The second safeguard is the subject of the Bill and it should be noted that the consents required in Clause 1 of the Superannuation Bill are specific to the civil service compensation scheme. The proposed additions of Paragraph (3A) and (3B) in Article 4(3) only relate to the Compensation Scheme and therefore Article 4 (3) remains unchanged for any other superannuation arrangements under Article 3 of the Superannuation (Northern Ireland) Order 1972.

The final two safeguards will be unaffected.

Clause 2 – new requirements for consultation process

On the issue of consultation versus negotiation, the Department has a statutory duty under Article 3(2) of the Superannuation (Northern Ireland) Order 1972 to engage in consultation with representatives of persons likely to be affected by changes to pension and compensation schemes before changes are made. The Department will formally consult with Trade Unions on proposed legislation to amend the compensation scheme in line with this requirement. The changes to the Superannuation Bill would not change this statutory duty.

The Pension Forum Terms of Reference (copy attached), which have been agreed with the Trade Union Side make clear that the Department will "consult with the aim of reaching agreement … on matters relating to the Compensation Scheme reform and Pensions reform."

This is in keeping the legislative provision and the requirement for appropriate engagement with TUS. The Pensions Forum was established in October 2011 and the Terms of Reference to move this to a consultative body were agreed on 21st June 2012. This Forum will provide a means to consult with Northern Ireland Civil Service trade unions at the earliest opportunity and at the most appropriate level on any proposed changes to the Home Civil Service pension and compensation arrangements in Great Britain which could have an impact on the arrangements for the Northern Ireland Civil Service. The Pensions Forum has met on seven occasions to date and the Superannuation Bill has been discussed at each meeting.

Timing is important for consultation to be effective; engagement has been and will continue to be undertaken in a timely manner with TUS. The Northern Ireland Civil Service unions represented on the Council of Civil Service Unions were involved in central negotiations with HM Treasury and the Cabinet Office on proposed reform of Home Civil Service compensation arrangements in 2009/10. Although the Council of Civil Service Unions has since been dissolved the seven nationally recognised trade unions in the civil services (PCS, POA, Prospect, FDA, NIPSA, Unite and GMB) are now part of a new National Trade Union Committee which provides these unions with a means to co-ordinate consultation with government on proposed reforms at formative stages.

In terms of formal consultation, the existing statutory requirement contained at Article 3(2) of the Superannuation (Northern Ireland) Order 1972 for consultation with trade unions representing civil servants does not specify a timeframe for consultation to take place. In certain circumstances, such consultation is a precondition to the Department exercising a power to make a statutory rule. In other cases, it is good practice. The Department adheres to the timeframes set out in the OFMdFM's "Practical Guide to Policy Making in Northern Ireland".

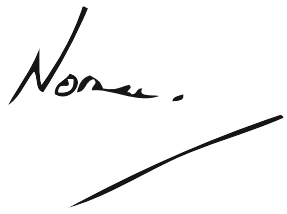
The Committee also raised the issue of amending the Bill to ensure it included detail on any changes to the provisions as a result of the consultation. The report laid in the Assembly will provide details of the efforts made to reach agreement on any proposed changes and will also include any amendments agreed during the consultation.

Equality Impact Issues & Human Rights Issues

The Department has nothing further to add.

I trust that this information provides all the clarification required by the Committee on the clauses on the Bill.

Yours sincerely,



Norman Irwin

Principal Civil Service Pension Scheme (Northern Ireland) [PCSPS(NI)] Pension Forum

Terms of Reference

1. Purpose

1.1. Under Article 3(1) of the Superannuation (Northern Ireland) Order 1972 the Department of Finance and Personnel has authority to make, and amend pension schemes for civil servants and associated employments. Article 3(2) of the Order places a requirement on the Department to consult with trade unions representing those affected by any change made in secondary legislation to the civil service pension and compensation schemes.

1.2. The Pension Forum has been established as an arena for engagement between Management Side and a composite representation of Trades Union Sides for the purpose of information sharing and formal consultation on matters relating to Compensation Scheme reform and Pensions reforms with the aim of reaching agreement on any changes.

1.3. Management will provide timely, relevant and meaningful information to Trade Union Side to facilitate constructive and timely consultation. The guiding principle will be to engage effectively with Trade Union Side, representative of all employee groups in the Northern Ireland Civil Service and associated employments covered by the PCSPS(NI) arrangements, at the earliest opportunity and at the most appropriate level.

2. Scope

2.1. The scope of the Principal Civil Service Pension Scheme (Northern Ireland) [PCSPS(NI)] Pension Forum shall extend to all employees of the Northern Ireland Civil Service and associated employments covered by the PCSPS(NI) arrangements.

3. Membership

3.1. Trade Union Side will consist of persons from Trade Unions recognised by the Northern Ireland Civil Service, namely, Northern Ireland Public Service Alliance (NIPSA); Prison Officers' Association; FDA and participants of the Central Joint Co-ordinating Council (CJCC), representing each of the main NICS staff groups i.e. Non-industrial staff, members of the Senior Civil Service and Industrial Staff respectively. Unite the Union will be the central contact for all the Industrial Trade Unions and will be responsible for the dissemination of information to other participants of the Central Joint Co-ordinating Council (CJCC), the central forum representing Industrial employees on matters relating to pay, and terms and conditions in the Northern Ireland Civil Service.

3.2. The Forum will consist of not more than 8 members nominated by Management Side and 8 members nominated by the aforementioned trade union side participants. The quorum for any meeting will be at least 3 representatives from each of Management Side and Trade Union Side (a total of 6 including the Management Side minute taker).

3.3. It shall be open to each side represented on the Pension Forum to vary their representatives

4. Contacts

4.1. Central contacts for communications shall be:

Trade Union Side:	Brian Campfield – NIPSA; Finlay Spratt – Prison Officers' Association; Jim Caldwell – FDA; and, Gareth Scott – Unite
Management Side:	Grace Nesbitt – Corporate HR Pensions Division Margaret Miskelly – Civil Service Pensions Blathnaid Smyth – Civil Service Pensions

5. Support

5.1. Civil Service Pensions shall accommodate meetings and provide secretarial support.

6. Meetings

6.1. The Chairperson at every meeting of the Forum shall be a member of Management Side and the Vice-Chairperson shall be a member of Trade Union Side. Meetings shall be held as considered necessary by the Chairperson and Vice-Chairperson.

6.2. The Pension Forum shall keep minutes of its proceedings. The minutes shall be prepared by the Management Side Secretary, and forwarded to Trade Union Side contacts for consideration. The minutes shall be formally tabled for agreement at the next meeting of the Forum.

7. Escalation Arrangements

7.1. This Forum is constituted for the purpose of consultation. However, where disagreement is registered, this can be formally escalated through a variation of the normal Whitley arrangements which shall allow for the participation of representatives from unions representing industrial as well as non-industrial staff.

8. Review Arrangements

8.1. It is noted that the legislative arrangements for engaging with Trade Unions will be subject to review. It is therefore agreed the remit of the Pension Forum will be reviewed to ensure its currency with the relevant legislative provision.

Signed ..... **(Management Side)**

Date 25 June 2012

Signed B. Campbell **(Trade Union Side)**

Date 21 June 2012

PCSU Judgement

Annex 2

Neutral Citation Number: [2010] EWHC 1027 (Admin)

Case No: CO/2777/2010

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 10/05/2010

Before :

THE HONOURABLE MR JUSTICE SALES

- -

Between :

The Queen (on the application of the Public and Commercial Services Union)	**Claimant**
- and -	
Minister for the Civil Service	**Defendant**

- -
- -

Mr Nigel Giffin QC & Mr Nicholas Randall (instructed by **Thompsons Solicitors**) for the **Claimant**
Ms Elisabeth Laing QC & Mr Clive Sheldon (instructed by **the Treasury Solicitor**) for the **Defendant**

Hearing dates: 22/4/10 – 23/4/10

- -

Approved Judgment

Mr Justice Sales :

Introduction

1. This is an application for judicial review of the introduction by the Defendant of amendments to the Civil Service Compensation Scheme. The Minister designated as the Minister for the Civil Service at present is the Prime Minister. I will refer to the scheme as it was in existence prior to the introduction of the amendments as "the CSCS" and to the scheme as now amended as "the amended CSCS".

2. The CSCS was made under section 1 of the Superannuation Act 1972 ("the 1972 Act") in 1994 and has been amended from time to time since then. The amendment provisions to create the amended CSCS were laid before Parliament by the Defendant on 5 February 2010 and purported to take effect with effect from 1 April 2010. The application came on before me as a rolled-up hearing for permission with detailed argument on the merits to follow. Having read into the case in advance of the hearing, I gave permission at the outset of the hearing for judicial review to proceed and heard full argument on the merits.

3. The purpose of the judicial review claim is to contest the lawfulness of amendments to the CSCS which have now been introduced. These have the effect of reducing in some cases the benefits to be received by civil servants who are made redundant, are compelled to take early retirement or are dismissed on grounds of structural reorganisation or in similar circumstances. The background to the introduction of the changes is the growing cost of pension provision as life expectation increases (since some of the benefits in question involve early payment of pensions), constraints upon the public finances in current circumstances and a desire on the part of the Government to reduce the costs of redundancy through restructuring of government departments and so forth.

4. The Claimant is a trade union representing large numbers of civil servants. It objects to the introduction of the changes to the CSCS. The Claimant maintains that the amendments to the CSCS deprive its members of what it says are accrued rights in respect of redundancy and other payments which might have to be made to them if certain contingencies occur - e.g. if they are made redundant or are compelled to take early retirement - and that by virtue of section 2(3) of the 1972 Act its consent is required before such changes could validly be brought into effect. It has not consented to the changes.

5. In the alternative, the Claimant submits that it had a legitimate expectation that its consent would be sought and obtained before the introduction of such changes to the CSCS, which legitimate expectation has been defeated by the Defendant without proper justification.

6. The CSCS contains many complicated, detailed provisions setting out various payments and pensions which may become payable in certain circumstances to civil servants. It was not necessary for the purposes of this application for me to be taken through the detail of all these benefits. The benefits may vary depending on when individuals became civil servants. Many of them are defined by reference to length of service or by reference to accrued pension entitlements, which in turn depend on the length of service or additional voluntary contributions which have been made by

employees. By way of example, it is helpful to set out the following passages from section 2 of the CSCS, which is headed "Compulsory and redundancy category (1972 Section Members)":

> "2.1 A civil servant who is compulsorily retired early on grounds of structure or limited efficiency, or retired early on grounds of redundancy, will receive the benefits as described in rules 2.2 to 2.9. ...
>
> *Early retirement for civil servants in post on or before 31 March 1997*
>
> 2.2 This rule applies where a civil servant:
>
> (a) was in post on or before 31 March 1997;
>
> (b) is retired early on or after 6 April 2006 under rule 2.1 above;
>
> (c) is aged 50 or over;
>
> (d) has five or more years' qualifying service;
>
> (e) has not opted out of the 1972 Section; and
>
> (f) has not opted in accordance with rule 2.4 to be treated under section 2A.
>
> The civil servant will be eligible for a pension and lump sum payable under the [Principal Civil Service Pension Scheme] in accordance with rule 3.11 of the 1972 Section, but with reckonable service increased by 6 2/3 years and the benefits being brought into payment immediately. ... If the civil servant's pension under rule 3.11 of the 1972 Section would have been higher if rule 1.6b of the 1972 Section were disregarded the civil servant will also be eligible for a lump sum compensation payment under rule 2.3a. ..."

7. In cases covered by rules 2.1 and 2.2, therefore, where compulsory early retirement is imposed on a civil servant who is aged 50 or over, his pension is brought into payment at the level to which his accrued pension entitlement entitles him on the basis of his years of reckonable service, without actuarial adjustment downwards and with the benefit of the notional increase of 6⅔ years of reckonable service. By contrast, where a civil servant elects to take early retirement at age 50 or over, he becomes entitled to early receipt of pension payments but actuarially reduced in amount on the grounds that the pension is being taken earlier than the normal retirement age.

8. In cases governed by rule 2.2 of the CSCS, both the amount of the pension which becomes payable and the amount of the lump sum payable are determined by reference to provisions in the Principal Civil Service Pension Scheme ("the PCSPS").

The amounts payable depend upon the years of reckonable service performed by the civil servant within the civil service and any additional voluntary contribution payments he has made to augment his entitlements under the PCSPS.

9. The effect of the changes in the amended CSCS will be to reduce the level of benefits available to some civil servants covered by rule 2.2 and other rules in the CSCS. The changes have been introduced as part of an overall package which produces increased benefits for some classes of worker but fewer benefits for others. The package has been accepted by five of the six trade unions who represent civil servants. However, the Claimant, which represents the largest number of civil servants, objects to the amendments on the grounds that a significant number of its members will be detrimentally affected by them.

The legal background to the Superannuation Act 1972

10. The position of civil servants at common law is that they are employed by the Crown at will and may be dismissed at any time without notice or other compensation: see Wade and Forsyth, *Administrative Law*, 9th ed., pp. 61-65. The harshness of that position has been significantly moderated by legislation, schemes made under legislation and administrative practice. In addition, in the 19th century pension provision for civil servants was introduced by legislation. The Superannuation Act 1834 ("the 1834 Act") and later Superannuation Acts included provisions which appeared to set out entitlements or rights of civil servants to receive pension when certain conditions were fulfilled: see, e.g., section 2 of the Superannuation Act 1859 ("the 1859 Act").

11. However, it was clearly established by authority that such entitlements did not constitute legal entitlements to payments. An important provision in that regard was section 30 of the 1834 Act, which stated:

> "Provided always, and be it further enacted, that nothing in this Act contained shall extend or be construed to extend to give any person an absolute right to compensation for past services, or to any superannuation or retiring allowance under this Act, or to deprive the Commissioners of His Majesty's Treasury, and the heads or principal officers of the respective departments, of their power and authority to dismiss any person from the public service without compensation."

This provision remained unrepealed in later Superannuation Acts and was consolidated in the Superannuation Act 1965 ("the 1965 Act") in section 79 of that Act, set out below.

12. The fullest discussion of the issue of entitlements for civil servants under these legislative provisions is in the judgment of the Court of Appeal in *Nixon v Attorney General* [1930] 1Ch 566. The case went on appeal to the House of Lords where, in a short decision, the Judicial Committee affirmed the judgments given in the Court of Appeal: see [1931] AC 184, especially at 190-191.

13. In the Court of Appeal in *Nixon* it was observed by Romer LJ that the 1834 Act was "one passed for the purpose of authorising the expenditure of public money and

defining the circumstances and manner in which it shall be expended and not one passed for the purpose of conferring rights upon any class of public servant" ([1930] 1Ch at 606); he went on to hold that that result was, in any event, achieved by section 30 of the 1834 Act. This meant that use of the word "entitled" meant no more than "entitled to expect" or "qualified to receive" (at pp. 606-607). Romer LJ dismissed the attempt by counsel for the civil servants in that case to draw a distinction between "right" and "absolute right", proposed by counsel in order to suggest some form of conditional legal "right" to a pension which, albeit not an "absolute" right, still existed as a right in law (at pp. 607 and 609). Lord Hanworth MR rejected the same argument and held that section 30 "destroyed the possibility of a claim of legal right" (at pp. 592 and 595). Lawrence LJ referred to authority which made the same point and came to the same conclusion (at pp. 599-603).

14. All members of the Court treated the speech of Lord Buckmaster LC in *Considine v McInerney* [1916] 2 AC 163 as authority against the proposition that the language of entitlement to superannuation allowances used at places in the 1834 Act and 1859 Act created a legal right to receive a pension (pp. 596-597 per Lord Hanworth MR, p. 601 per Lawrence LJ, and pp. 610-613 per Romer LJ). Lord Buckmaster emphasised that this was precluded by section 30 of the 1834 Act: see [1916] 2 AC at 169.

15. In *Nixon* in the House of Lords, Viscount Dunedin gave the leading speech. He approved the reasoning of the Court of Appeal and said this at [1931] AC 191:

> "My Lords, there is, first, the question of how the matter stands upon the statutes. The learned counsel had to admit that in quite the early days there obviously was no actual right in a servant of the King to have a pension, and he really pinned his faith to the Act of 1859 and the second section of it. It is impossible, of course, in that section to find positive words which direct that a pension must be granted; the phrase is: "Subject to the exceptions, the Superannuation Allowance to be granted after the commencement of this Act to persons who shall have served shall be," so-and-so. All through the Acts that follow there is a frequent use of the word "entitled", but "entitled", I take it, shows no more than entitled to such as the Acts give him. I cannot do better there than quote the phrase which Lord Buckmaster used in *Considine v. McInerney*, where, summing up the position, he says: "He was entitled to expect an annual allowance," and then he goes on, in the well known words that have been so often quoted, to say: "This expectation, though it might be relied on with full certainty, was none the less not a legal right, and no claim for it could be enforced by any legal proceedings." But the difficulty under that Act and the following Acts does not end there, because, in the first place, there is s. 30 of the Act of 1834, which was specially exempted from the repeal which was made of all other sections, and has to be read with all the Acts up to the present date. The only argument that was presented upon that was that s. 30 of the Act of 1834 says there is to be no absolute right. My Lords, to get out of a provision that you are not to have an

> absolute right a positive provision that you are to have a right, is an argument which has only to be stated to be rejected. ..."

16. In the Court of Appeal in *Nixon* at [1930] 1 Ch 607-608 Romer LJ commented as follows on the change to language apparently of entitlement in section 2 of the 1859 Act, which sat alongside a forfeiture provision in section 9 of that Act:

> "Why, it is asked, should this change of language occur in s. 2, and what was the necessity for this express power conferred by s. 9, if the Legislature intended the grant and the amount of the pension to be a matter of grace and not of right? I think that the explanation is as follows: The Commissioners of the Treasury in the exercise of the powers conferred upon them by the 1834 Act were, I strongly suspect, in the habit of always granting the maximum pensions allowable. When, therefore, the Legislature was passing the amending Act of 1859 for the purpose of apparently further defining the powers of the Commissioners, it might quite intelligibly have done so in the language employed in the Act, without intending to confer upon the civil servants a legal right to have the pensions awarded to them. It would, on the other hand, be very surprising if the Legislature when conferring such a right for the first time should have made so great a change in the law by such vague and ambiguous language. ..."

This is of some relevance to the arguments raised by the Claimant before me.

17. The position under the Superannuation Acts, therefore, as established by strong authority, was that they were to be regarded primarily as setting out a code detailing authorisation for payments to civil servants without creating any rights for the civil servants to receive such payments, and that the absence of any right for a civil servant to receive payment was the effect of the inclusion of section 30 of the 1834 Act in the statutory scheme, quite apart from other considerations. The language of the legislation, which appeared to be redolent of entitlements and rights for civil servants, fell to be read subject to these points and against the background of an absence of any rights against the Crown at common law to compensation or payment and did not create any such rights.

18. Section 7 of the 1859 Act provided that it should be lawful for the Treasury "to grant to any person retiring or removed from the public service in consequence of the abolition of his office, or for the purpose of facilitating improvements in the organisation of the department to which he belongs, by which greater efficiency and economy can be effected, such special annual allowance by way of compensation" as the Treasury consider "reasonable and just compensation for the loss of office". It was thus clear, both by the terms of section 7 and by the continued operation of section 30 of the 1834 Act, that a civil servant dismissed on grounds of what would now be termed redundancy or for reasons of structural reorganisation might be paid an allowance but had no enforceable right to such payment.

19. The Superannuation Acts were consolidated in the 1965 Act. In contrast to some of the provisions in the earlier legislation, the main substantive provisions of that Act providing for payment of pensions and compensation in certain circumstances were expressed in permissive rather than mandatory terms ("the Treasury may grant..." etc.).

20. Part I of the 1965 Act contained detailed provisions dealing with superannuation benefits. These included a provision which in substance re-enacted section 7 of the 1859 Act (section 8) and a provision (section 10) providing that an appropriate Minister could grant superannuation allowances (pensions) and additional allowances (lump sum payments) to civil servants aged 50 or more compelled to take premature retirement in the interests of efficiency. Section 11 of the 1965 Act provided for reduction of pensions and allowances on grounds of defaults or demerit in relation to public service. Part II of the 1965 Act contained special provisions relating to superannuation benefits for members of the diplomatic service. Section 30 of the 1834 Act was re-enacted as section 79 of the 1965 Act, as follows:

> "Nothing in this Act shall extend or be construed to extend to give any person an absolute right to any allowance or gratuity under Part I or Part II of this Act or to deprive the Treasury or the head or principal officer of any department of their or his power and authority to dismiss any person from the public service without compensation."

21. In light of the authorities referred to above, which had authoritatively explained the effect of section 30 of the 1834 Act, there can be no doubt that Parliament intended section 79 of the 1965 Act to have the same legal effect, namely to ensure that civil servants had no legal entitlement to receive nor any legal right with respect to the benefits referred to in the 1965 Act. Again, the object of the 1965 Act was to set out a statutory authorisation for making payments rather than to create entitlements for civil servants to receive payments.

22. The 1965 Act was supplemented by an administrative code known as "Estacode" which reflected negotiations between the management side and the staff side, represented by trade unions, under the Whitley Council system. Estacode set out detailed administrative provisions explaining, inter alia, how matters such as redundancy, compulsory early retirement on efficiency grounds and the like would be handled and the Act and Estacode set out what payments civil servants could expect to receive in such cases, both in terms of early payment of pension and lump sum payments.

23. Section M of Estacode dealt with the topic of superannuation and payments under the 1965 Act. Paragraph 2(a) of Estacode stated: "The following points should be noted: (a) there is no legal right to any allowance or gratuity (section 79 [of the 1965 Act])...". This spelled out in the administrative code the effect of section 79 of the 1965 Act. The legal effect of section 79 and the absence of any legal right to any allowance or gratuity (i.e. including any pension payments or lump sum payments) was clear to all concerned, both on the staff and management sides.

24. Notwithstanding the discretionary nature of such payments, for a long time before 1965 it appears that full payments of pensions and lump sums had in fact been made under the various legislative regimes and administrative codes: see the observations of Romer LJ in *Nixon v Attorney General* quoted at para. [16] above and of Lord Buckmaster LC in *Considine v McInerney* at [1916] 2 AC 170 (referring to the payment which a civil servant was "entitled to expect" and saying, "This expectation, though it might be relied on with full certainty, was nonetheless not a legal right, and no claim for it could be enforced by any proceedings"). This is unsurprising, since the Crown had an interest in attracting good quality civil servants into its service despite the absence of legal rights for them at common law and under statute, and the regular exercise of discretionary powers in their favour would be likely to encourage such service. The regularity of payment did not convert the 1965 Act and Estacode into a regime of entitlement, as the express reservation in section 79 of the 1965 Act and paragraph 2(a) in section M of Estacode made clear. In line with the earlier practice, it appears that the practice after 1965 remained that 1965 Act payments were always made and Whitley Council agreements incorporated into Estacode were also always honoured.

25. In the late 1960s/early 1970s the position of civil servants was subject to review by the Fulton Committee. In parallel with that review, the Joint Superannuation Committee of the National Whitley Council ("the Joint Committee") was set up in 1968 to review the provisions of the 1965 Act and associated legislation. The Joint Committee produced its report in February 1972 at a time when a new Superannuation Bill was before Parliament. The Joint Committee noted that improvements were necessary to the superannuation scheme "to restore to the civil service the position it had traditionally held as one of the leaders in pension practice". The Joint Committee's report was written with notice of the terms of the Superannuation Bill then before Parliament and was intended to inform the drafting of the Bill and the superannuation scheme later to be introduced under it (see paragraphs 10-12 of the report: it was noted that in the interest of flexibility and easy adaptability to new circumstances, the civil service pension scheme was to be removed from the statute book and replaced by pension terms set out in administrative documents promulgated by the Minister for the Civil Service).

26. The Joint Committee's report dealt with entitlement to benefit and forfeiture at paragraphs 91-95 as follows:

> "*Entitlement to benefit*
>
> 91. Hitherto, Civil Service pension benefits have always been discretionary. Section 79 of the Superannuation Act 1965 states that nothing in the Act shall be construed as giving any civil servant an absolute right to benefit. The Government are satisfied that they have never abused this power of discretion; nevertheless, the Committee feel that it is wrong that there should be such a power and that there is no good reason why civil servants should not have a legal entitlement to their pensions. In all the other public service schemes (except the armed forces), and in the great majority of private schemes, there is a legal right to benefit.

92. The Superannuation Bill is so framed as to make it possible for the new administrative scheme to specify benefits as mandatory. In the new scheme, there will be a right to benefits where this is to the advantage of the civil servant. This includes the main pension and lump sum, and widows' and dependants' pensions. But for tax reasons the following benefits will continue to be discretionary:

(i) the death gratuity and supplementary death gratuity;

(ii) the short service gratuity, unestablished gratuity and marriage gratuity;

(iii) all injury benefit payments;

(iv) all compensation (as opposed to pension) payments in the premature retirement terms.

Otherwise there will be an enforceable legal entitlement to the benefits of the scheme, except in the rare cases where the forfeiture rules may apply.

Forfeiture

93. The Committee agree that with the introduction of preservation, and the new role envisaged for pensions nationally, it would be inappropriate to continue the rules whereby Civil Service pensions can be forfeited or reduced in cases of misconduct and other circumstances. In particular, there will be no question in the future of dismissal from the Service automatically leading to forfeiture of pension rights. However, the Committee agree that there is a narrowly-defined range of circumstances in which pensions should be forfeited or withheld:

(i) Pensions will be automatically forfeited under the Forfeiture Act 1870 if the pensioner is convicted of treason (which normally happens only in wartime).

(ii) If a pensioner goes bankrupt, there will continue to be provision (under the Bankruptcy Acts) for the pension to be paid over in discharge of his liabilities.

(iii) Under Clause 5 of the Superannuation Bill, the pensioner will forfeit his pension if he assigns or tries to assign it.

(iv) Departments will have a limited power to impose a lien on pension benefits in respect of sums misappropriated or owed to them by the employee. That is, the Department will be able to reduce the

> pension or deferred pension by the actuarially appropriate amount if the pensioner is unwilling to repay the amount out of his own resources. If the pensioner disputes the liability, the Department will not be able to exercise the lien without first obtaining an order or judgment from a competent Court specifying the sum due.
>
> 94. In the vast majority of misconduct cases, forfeiture will not apply. But the Committee accept that the Government will reserve the right to impose forfeiture on the pensions of those guilty of particularly serious misconduct against the State e.g. a major security offence. But it should be emphasised that these cases will be extremely rare, and that when they occur two safeguards will apply. Firstly, the circumstances of each case will be discussed on a 'without prejudice' basis between the Staff and Official Sides before a decision is taken. Secondly, all staff will have a right to appeal to the Appeal Board (which is being set up in connection with the premature retirement arrangements) against a decision that a pension should be forfeited for misconduct. Moreover, the Department will accept the Appeal Board's judgment in such cases. This right of appeal will be available to those who have already left the Service when they forfeit their pensions, as well as to those who are still in service.
>
> 95. These forfeiture rules are necessarily subject to the provisions of the proposed national legislation on preservation of pension rights and on the conditions for exemption from the State Reserve Scheme. They will apply equally to deferred and full-term pensions."

27. The Joint Committee therefore recommended in clear terms that civil servants should have a legal entitlement to their pensions, but not to compensation (as opposed to pension) payments in the premature retirement terms. In my view, the reference in paragraph 92(iv) to "pension payments" in the premature retirement terms was to the entitlement to early payment of pension on enhanced terms which was to be a benefit in certain cases (as noted, e.g., in paragraph 48 of the report; see now rule 2.2 of the CSCS, set out above). Presumably pension payments, including one paid under those provisions, would be taxable income so there would be no tax advantage in leaving it as a discretionary benefit. Other compensation payments (i.e. lump sum payments) might be taxable and so were to be treated as discretionary in order to secure advantageous tax treatment. In view of the practice up to that point of paying such benefits, it is likely that the strong expectation was that they would in practice always continue to be paid, albeit that a discretion not to pay was to be reserved for the Crown.

28. The forfeiture provisions to be introduced were to be narrowed. According to the report, the main focus of the provisions was to be on payment of pensions. This tends

to support the interpretation of paragraphs 91 and 92 of the report as indicating an intention that payment of pensions (including cases where pensions were to be paid under the premature retirement terms) should be as of right, subject only to the detailed forfeiture provisions.

29. Section III of the Joint Committee's report dealt with preservation and transferability of pensions, noting that the object should be "to ensure that occupational pension rights are not lost when an employee leaves his employment before reaching the retirement age" (paragraph 22).

30. Paragraph 12 of the Joint Committee's report included the following:

> "12. The Staff Side have welcomed the Superannuation Bill, given the safeguards it contains. Firstly, the Bill lays a statutory obligation on the Minister for the Civil Service to consult staff interests before making changes. Secondly, there is a provision preventing him from worsening pensions in payment or pension rights already accrued unless the staff interests agree to it. Thirdly, the Bill allows the scheme to give a legal entitlement to pensions rather than to continue on the discretionary basis laid down in the Superannuation Acts. ..."

In my view, the reference to a legal entitlement to pensions as the third protection refers generally to all cases when pensions were to be payable under the new scheme, including cases of compulsory early retirement. That is also the natural inference to be drawn from paragraphs 91 and 92 of the report.

31. The first protection referred to in paragraph 12 of the report was the consultation obligation in what became section 1(3) of the Superannuation Act 1972 ("the 1972 Act"). The second protection referred to was the provision in the Bill which became section 2(3) of the 1972 Act. The long title to the 1972 Act described it, inter alia, as "an Act to amend the Law relating to pensions and other similar benefits payable to or in respect of persons in certain employment...". It is clear from the long title and from its various provisions that the 1972 Act was not confined to dealing with entitlements to pensions alone.

32. Section 1 of the 1972 Act, headed "Persons employed in the civil service etc.", provided in relevant part as follows:

> "(1) The Minister for the Civil Service (in this Act referred to as "the Minister")-
>
> *(a)* may make, maintain, and administer schemes (whether contributory or not) whereby provision is made with respect to the pensions, allowances or gratuities which, subject to the fulfilment of such requirements and conditions as may be prescribed by the scheme, are to be paid, or may be paid, by the Minister to or in respect of such of the persons to whom this section applies as he may determine;

(b) may, in relation to such persons as any such scheme may provide, pay or receive transfer values;

(c) may make, in such circumstances as any such scheme may provide, payments by way of a return of contributions, with or without interest; and

(d) may make such payments as he thinks fit towards the provision, otherwise than by virtue of such a scheme of superannuation benefits for or in respect of such of the persons to whom this section applies as he may determine. ...

(3) Before making any scheme under this section the Minister, or, if the Minister so directs in relation to a particular scheme, another Minister of the Crown specified in the direction, shall consult with persons appearing to the Minister or that other Minister, as the case may be, to represent persons likely to be affected by the proposed scheme or with the last-mentioned persons.

(4) This section applies to persons serving –

(a) in employment in the civil service of the State; or

(b) in employment of any of the kinds listed in Schedule 1 to this Act; or

(c) in an office so listed.

(5) Subject to subsection (6) below, the Minister may by order-

(a) add any employment to those listed in the said Schedule 1, being employment by a body or in an institution specified in the order,

(b) add any office so specified to the offices so listed, or

(c) remove any employment or office from the employments or offices so listed.

(6) No employment or office shall be added to those listed in the said Schedule 1 unless the remuneration of persons serving in that employment or office is paid out of moneys provided by Parliament or the Consolidated Fund.

(7) Notwithstanding subsection (6) above, the Minister may by order provide that this section shall apply to persons serving in employment which is remunerated out of a fund specified in the order, being a fund established by or under an Act of Parliament. ..."

33. In section 1(1)(a) the words, "are to be paid, or may be paid", and the removal of section 79 of the 1965 Act from the primary legislation made it clear that a scheme made by the Minister under section 1 could provide for both mandatory payments (i.e. as a matter of legal entitlement for the civil servant employee) and for a discretion for the Minister to make payments.

34. Section 1(4)-(7) indicated that the scope of the statutory regime was persons to whom payments were to be made out of the Consolidated Fund or from monies voted by Parliament.

35. Section 2 of the 1972 Act provided in relevant part as follows:

> "...
>
> (2) Any scheme under the said section 1 may make provision for the payment by the Minister of pensions, allowances or gratuities by way of compensation to or in respect of persons –
>
> *(a)* to whom that section applies; and
>
> *(b)* who suffer loss of office or employment, or loss or diminution of emoluments, in such circumstances, or by reason of the happening of such an event, as may be prescribed by the scheme.
>
> (3) No scheme under the said section 1 shall make any provision which would have the effect of reducing the amount of any pension, allowance or gratuity, in so far as that amount is calculated by reference to service rendered before the coming into operation of the scheme, or of reducing the length of any service so rendered, unless the persons consulted in accordance with section 1(3) of this Act have agreed to the inclusion of that provision.
>
> (4) Subject to subsection (3) above, any scheme under the said section 1, or any provision thereof, may be framed –
>
> *(a)* so as to have effect as from a date earlier than the date on which the scheme is made; or
>
> *(b)* so as to apply in relation to the pensions, allowances or gratuities paid or payable to or in respect of persons who, having been persons to whom the said section 1 applies, have died or ceased to be persons to whom that section applies before the scheme comes into operation; or
>
> *(c)* so as to require or authorise the payment of pensions, allowances or gratuities to or in respect of such persons. ...

> (9) Any scheme under the said section 1 may amend or revoke any previous scheme made thereunder.
>
> (10) Different schemes may be made under the said section 1 in relation to different classes of persons to whom that section applies, and in this section "the principal civil service pension scheme" means the principal scheme so made relating to persons serving in employment in the home civil service or the diplomatic service.
>
> (11) Before a scheme made under the said section 1, being the principal civil service pension scheme or a scheme amending or revoking that scheme, comes into operation the Minister shall lay a copy of the scheme before Parliament.
>
> (12) Notwithstanding any repeal made by this Act, the existing civil service superannuation provisions, that is to say, the enactments and instruments listed in Schedule 2 to this Act, shall, with the necessary adaptations and modifications, have effect as from the commencement of this Act as if they constituted a scheme made under the said section 1 in relation to the persons to whom that section applies, being the principal civil service pension scheme, and coming into operation on the said commencement and may be revoked or amended accordingly."

36. Section 2(2) specifically authorised the Minister to include in a scheme made under section 1 provision for payment of "pensions, allowances or gratuities" as compensation for persons who suffer loss of office or employment. This covered, for example, provision for payment of early enhanced pensions and lump sum payments to persons who were subject to compulsory early retirement as contemplated by the 1965 Act and as referred to in the Joint Committee report.

37. Where section 2(3) applied, it conferred a particularly strong protection for civil servants, since the agreement of their representative trade union would be required for any changes to take effect - mere consultation would not be enough. By virtue of section 1(12) of the 1972 Act read with Schedule 2 to that Act, the scheme in the 1965 Act – including section 79 of that Act – was deemed to be a scheme made under section 1 of the 1972 Act as at the commencement of the relevant provisions in the 1972 Act on 25 March 1972. Therefore it appears that that scheme was intended to attract the protection in section 2(3), notwithstanding the incorporation of section 79 of the 1965 Act in the scheme.

38. That impression is reinforced by the terms of paragraph 12 of the Joint Committee report, which records the understanding of the staff and management sides at the time regarding the protections which would apply with the introduction of the Superannuation Bill. Such contemporaneous understanding of the effect of an Act, particularly by an official body like the Joint Committee, constitutes a powerful form of *contemporanea expositio* and is a legitimate aid to the construction of that Act: see

Bennion on Statutory Interpretation, 5th ed., pp. 702-706 and 711-712. That is especially the case where, as here, an Act is being introduced specifically to regulate relations between certain persons and it is those persons who have the understanding in question.

39. This understanding of the effect of section 2(3) is also borne out by the words of section 2(3) itself, as originally enacted. In that regard I accept the submission of Mr Giffin QC for the Claimant that on its natural construction the provision applied to pensions, allowances and gratuities of all forms, including those to be paid by way of compensation for loss of office or employment as referred to in section 2(2) (see the word, "any", in section 2(3)), thus covering both lump sum payments and early or enhanced payments of pension in such cases. The words, "in so far as that amount is calculated by reference to service rendered before the coming into operation of the scheme", in section 2(3) were apt to cover the amount of any lump sum payment or pension payment in case of dismissal on grounds of redundancy, departmental restructuring or compulsory early retirement or the like, where the amount to be paid was calculated by reference to service rendered before the commencement of the 1972 Act (and hence before the deemed commencement of the existing scheme as a scheme under section 1 of the 1972 Act by virtue of section 2(12) of that Act). The operation of the provision was not expressed to depend upon the civil servant having legal rights to such benefits.

40. The presence of the general provision in section 79 of the 1965 Act (as part of the original deemed scheme under section 1 of the 1972 Act) preventing any legal rights to such payments and, indeed, preventing any legal rights even to those pension payments and lump sums due to commence or to be paid upon reaching the ordinary retirement age from arising was clearly not intended to have the effect of depriving civil servants of any protection at all under section 2(3). Section 2(3) was expressed in language apt to cover the administrative arrangements governing payments under the 1965 Act and Estacode, which were well known to both the staff and management sides and which were routinely followed in practice.

41. Ms Laing QC, for the Defendant, accepted that the protection in section 2(3) as originally enacted covered pension payments and lump sums due to commence or to be paid upon reaching the ordinary retirement age, but sought to suggest that it did not cover payments (whether by way of early pension or lump sums) as compensation for earlier loss of office or employment. I can see no textual or other warrant for limiting the operation of section 2(3) in this way. As submitted by Mr Giffin, section 2(3) as originally enacted provided no basis for drawing any distinction between ordinary pension payments and pension and other payments payable in the type of circumstances covered by section 2(2).

42. Ms Laing sought to support her submissions by reference to the notes on clauses prepared for Ministers at the time of the passage of the Superannuation Bill through Parliament in 1972. There is no evidence that these notes on clauses were made generally available in the course of parliamentary debates on the Bill. It seems that they were simply for the private use of Ministers in the course of debates. In my view, it is not legitimate to refer to them as an aid to construction of the legislation. In any event, I did not find any clear or helpful indication in the notes on clauses I was shown in relation to the 1972 Act which would have caused me to depart from the analysis above.

43. The conclusion I have reached that section 2(3) of the 1972 Act as originally enacted covered payments due as a matter of administrative practice rather than legal entitlement, payable in circumstances of loss of office or employment, where such payments were "calculated by reference to service rendered before the coming into operation of the scheme" gives rise to what might be regarded from a certain perspective as an odd position. Why should the strong protection in section 2(3) apply in relation to benefits to which there was no legal entitlement? I consider that the oddity disappears when it is recalled that, by long tradition, the discretion not to pay such benefits by virtue of section 79 of the 1965 Act was formally reserved but does not appear to have been operated in practice. As a matter of practice, both staff and management sides in 1972 took the benefits set out in the 1965 Act and Estacode to be entitlements in all but legal theory. In light of that it made considerable sense from the point of view of civil servants and their unions that the 1972 Act should include the protection set out in section 2(3) as a protection covering not just ordinary pension and lump sum payments upon retirement in the ordinary course, but also pension and lump sum payments (if calculated by reference to length of service) payable as compensation for earlier loss of office or employment as contemplated by section 2(2) of the 1972 Act. In both cases a civil servant was to be regarded as having built up by reference to length of service an expectation closely analogous to a right to enhanced protection (something which could be "relied on with full certainty", in the words of Lord Buckmaster), whether in the form of expectation of an increased pension entitlement if retiring at the ordinary retirement age, or enhanced protection if made redundant or compulsorily retired before then.

44. It is noteworthy that paragraph 12 of the Joint Committee report uses the expression, "pension rights already accrued", to refer to pension rights which have accrued according to the administrative practice up to then (as distinct from as a matter of legal entitlement). This underscores the point that the staff side and the management side regarded the detailed administrative rules operated under the 1965 Act as creating what was in substance a set of accrued rights based on length of service. Viewed as accrued rights, these fell to be protected from future changes to the scheme.

45. Moreover, under the scheme contained in the 1965 Act, compensation for early retirement etc. under the scheme was integrated with the general provisions on payment of pensions. So, for example, where a civil servant aged 50 or over was subject to premature retirement, he was to be entitled to early payment of pension and a lump sum (section 10 of the 1965 Act, read with section 5). The scheme did not draw a distinction between ordinary pensions and lump sums payable on reaching ordinary retirement age on the one hand, and pensions and lump sums payable upon termination of employment at different times on the other. This feature of the scheme, in existence when the 1972 Act was passed, serves to reinforce the point made by Mr Giffin that no distinction in terms of protection of "accrued rights" in relation to pensions and other payments was intended to be drawn between retirement at ordinary retirement age or earlier dismissal so far as the protection conferred by section 2(3) was concerned.

46. This integration of compensation rights and pension rights referred to above continued to be a feature of the first scheme made by the Minister under section 1 of the 1972 Act – the PCSPS - which was laid before Parliament on 15 June 1972 and came into operation on 16 June 1972, and of the PCSPS as it stood when section 2(3)

of the 1972 Act was amended in 1990. It also continued to be a feature of the CSCS when it was separated off from the PCSPS as a distinct scheme in 1994 (as described below), as is illustrated by the terms of rule 2.2 of the CSCS set out above. It continues to be a feature of the amended CSCS.

47. Further, although at the time the 1972 Act came into force the relevant scheme (i.e. that contained in the 1965 Act) did not contain any legal entitlements on the part of civil servants to receive the pension and lump sum payments which it was expected would be paid, it did set out a regime by reference to which any civil servant could invite the Minister to exercise his discretion to make such payments in his favour. In relation to a decision in that regard, the civil servant might have public law claims against the Minister if he did not exercise his discretion in a fair and proper manner. Those claims would be likely to be improved if the Minister continued, despite amendment of the scheme, to be subject to an administrative practice or policy of making payments calculated by reference to length of reckonable service in accordance with the scheme prior to its amendment. In particular, it might well be difficult in public law terms for the Minister to fail to recognise existing administrative entitlements as set out in the scheme in individual cases. Therefore, protection by virtue of section 2(3) of "accrued rights" under the administrative scheme, even though they did not constitute legal entitlements as such, would be of real legal benefit to the individuals who had accumulated them by long service. It is plausible to infer that, for this reason also, Parliament intended by section 2(3) of the 1972 Act to confer protection for individuals in relation to such "accrued rights".

Development of the legal framework from 1972 and the interpretation of section 2(3) of the 1972 Act as amended

48. At first, the schemes made by the Minister under section 1 of the 1972 Act followed the pattern of the scheme under the 1965 Act by dealing with pensions and compensation arrangements in a single scheme – the PCSPS. Rule 8.1 of the PCSPS gave effect to the recommendation of the Joint Committee in paragraph 91 of its report by adapting the language of section 79 of the 1965 Act to provide that certain benefits, including "compensation payments for premature retirement under section 10 [of the PCSPS]", should be paid only as a matter of discretion not right. By inference from that provision and from the language of entitlement in relation to other benefits (such as pension benefits) used elsewhere in the PCSPS, the PCSPS conferred legal rights to those other benefits (including, on its proper construction in light of the Joint Committee report, pension benefits when they became payable in respect of early loss of employment).

49. In 1990 the 1972 Act was amended by the Pensions (Miscellaneous Provisions) Act 1990 ("the 1990 Act"). The changes were introduced to take account of pension rights under money purchase schemes which were now to be available (i.e. schemes whereby additional pension rights could be purchased by money contributions made by employees). Section 2(3) of the 1972 Act was amended so as now to read:

> "No scheme under the said section 1 shall make any provision which would have the effect of reducing the amount of any pension, allowance or gratuity, in so far as that amount is directly or indirectly referable to rights which have accrued (whether by virtue of service rendered, contributions paid or

any other thing done) before the coming into operation of the scheme, unless the persons consulted in accordance with section 1(3) of this Act have agreed to the inclusion of that provision."

50. This is the provision which is currently in force. Ms Laing submits that the new reference to "rights which have accrued" in section 2(3) (as amended) shows that the provision confers protection only in relation to benefits under the PCSPS or CSCS to which individual civil servants have a full legal entitlement. She further submits that such benefits are limited to benefits payable when retirement occurs at normal retirement age and do not include benefits payable under the CSCS in relation to redundancy, compulsory early retirement and so forth.

51. I do not accept these submissions. As to the first point, in my judgment the phrase "rights which have accrued" uses the words "rights" and "accrued" in the same natural, non-technical sense in which they were used in paragraph 12 of the Joint Committee report. In the context of the PCSPS as it stood down to 1994 and now in the context of the PCSPS and CSCS, those entitlements which existed as a matter of administrative practice (albeit not as a matter of legal right) were nonetheless regarded by both staff and management sides as "accrued rights" in the sense relevant for the protection of section 2(3) to apply. The position down to 1972, according to which benefits which were as a matter of legal form discretionary were nonetheless treated in substance as entitlements and were in fact always paid, had been continued without a break up to the amendment of the law in 1990. Moreover, the language in the PCSPS in relation to such discretionary benefits was the language of entitlement and right. Thus, on the natural reading of section 2(3) in its particular context and against the background of the Joint Committee report, I consider that the phrase, "rights which have accrued", was apt to cover both those pension and other rights which were a matter of legal entitlement and also other "rights" to benefits which were in substance a matter of administrative entitlement.

52. This interpretation of section 2(3) as amended is supported by a number of other factors:

i) Under the PCSPS as it stood in 1990, entitlements to pension payments and to other lump sum payments were closely bound up together, were expected to be paid in each case as of course, and there was no apparent reason for treating them differently in terms of protection under section 2(3). The reason given in the Joint Committee report and subsequently for continuing to treat some benefits as discretionary was to secure tax advantages for employees, which reason did not suggest that there should be any lesser protection in respect of such benefits than in respect of pension payments so far as concerns the operation of section 2(3);

ii) It appears from examination of the terms of the 1990 Act and the other amendments it introduced into the 1972 Act (see e.g. section 1(2A), referring to money purchase schemes) that the intention of Parliament in the 1990 Act was simply to make amendments to the 1972 Act to accommodate money purchase schemes and not to remove or cut down substantive protective rights

conferred by the 1972 Act as originally enacted, in particular in section 2(3). If the intention had been to remove or cut down the protection for individuals afforded by section 2(3) as originally enacted, I think that much clearer language would have been used; and

iii) The Minister who introduced the 1990 amendment in Parliament made statements on the second reading of the Bill in 1990 (see Hansard, HC Deb., 8 January 1990, vol. 164 cols. 709-727) which made clear that there was nothing "in this largely technical and tidying up Bill that needs to be controversial..." and that the Bill made only "minor changes to the legislative framework for public service pensions" including "minor consequential amendments occasioned by the wider scope for making additional voluntary contributions introduced following the Social Security Act 1986" and did "not make major amendments to the existing law". In relation to the clause containing the amendment to section 2(3) of the 1972 Act, he said: "[it] brings money purchase pension schemes for civil servants within the scope of the existing arrangements for agreeing amendments to civil service pension schemes that may adversely affect the accrued rights of scheme members or pensioners". In my view, these statements constitute statements in Parliament by the promoter of the Bill of the requisite clarity to provide a good indication of the object or mischief at which a provision was aimed, to which it is legitimate and appropriate to have regard when interpreting the legislation in question. The statements clearly show that it was no part of the purpose for the amendment to cut down existing protective rights as already set out in section 2(3), but rather was to extend that existing protection to cover rights of the relevant kind which had been acquired by making additional voluntary contributions as well as by length of service.

53. In addition to these statements in Hansard, both parties sought to rely upon the notes on clauses which were prepared in relation to the relevant amendment in 1990. It appears that these notes on clauses were circulated generally to MPs, unlike the notes on clauses in relation to the 1972 Act referred to in para. [42] above. This seemed to have been done pursuant to a practice which developed for Ministers to share notes on clauses with MPs (see *Craies on Legislation*, 9th edition, paragraph 9.4.1). This was in the period before the adoption of the modern practice of publishing Explanatory Notes alongside Bills: see *Craies*, paras. 9.4.1 to 9.4.5 and 27.1.7; *Bennion, op. cit.*, pages 641-643.

54. There are some examples in the authorities of reference being made to notes on clauses (see *Davidson v The Scottish Ministers* [2005] UKHL 74 at [50] per Lord Hope and *R. v St Helens Justices, ex p. Jones* [1999] 2 All ER 73), but it is unclear quite what weight is given to them in these cases and there was no detailed discussion whether it is in fact appropriate for reference to be made to such materials as aids to the interpretation of an Act of Parliament.

55. In my judgment, notes on clauses (as distinct from published explanatory notes) are not a proper aid to the interpretation of an Act of Parliament, whether they are circulated to MPs (as happened in relation to the 1990 Act) or not (as in relation to the 1972 Act). Although in the former case, unlike the latter case, it might be argued that there are some grounds for saying that the notes on clauses form part of the contextual background against which the Bill was passed by Parliament as a collective body, so

that they should be taken to have an interpretive role and status analogous to that of statements in a White Paper proposing legislation, or in clear statements by a promoter of a Bill in Parliament or in modern form Explanatory Notes, I think that there is an important difference from all these cases. Notes on clauses when not cited in debate are private documents not available to the public at large, unlike White Papers, statements reported in Hansard and published Explanatory Notes. An Act of Parliament creates law applicable to all citizens. In my judgment, it is fundamental that all materials which are relevant to the proper interpretation of such an instrument should be available to any person who wishes to inform himself about the meaning of that law. That is not the position in relation to notes on clauses and for that reason I do not consider they are a legitimate aid to construction of an Act of Parliament. (I should perhaps add that, in any event, even if reference were to be made to the notes on clauses for the 1990 Act, they would in my view serve to confirm the point already made above by reference to Hansard).

56. For these reasons, I accept Mr Giffin's submission that section 2(3) of the 1972 Act as amended is properly to be interpreted as conferring protection in relation to all entitlements in the PCSPS and CSCS referable to length of service and contributions paid, whether they constitute legal entitlements in the full sense or entitlements as a matter of established and declared administrative practice as set out in any relevant scheme made under section 1 of the 1972 Act.

Application of section 2(3) of the 1972 Act in relation to the CSCS

57. It remains to explain the significance of that conclusion in relation to the present situation. After the 1972 Act was amended in 1990, further changes were made to the PCSPS. In 1994, for reasons to do with seeking to ensure that the civil service pension scheme complied with Inland Revenue standards and with seeking to facilitate possible privatisation of public services, the elements of the PCSPS which related to redundancy, compulsory early retirement and so forth were separated off from the ordinary pension provisions, to constitute the CSCS. The CSCS was made as a scheme under section 1 of the 1972 Act, since it amended the PCSPS: see sections 2(9) to 2(11) of the 1972 Act. However, it is clear that this change was not intended to produce any substantive alteration in the pension and other benefits available to civil servants, and the CSCS and PCSPS remained closely linked, as rule 2.2 of the CSCS set out above illustrates.

58. The CSCS continued to include a provision derived from section 79 of the 1965 Act. Rule 1.4 of the CSCS provides:

> "Compensation payments for early retirement or severance under sections 2 to 8 of this scheme and for personal injury under section 10 of this scheme will be paid at the discretion of the Minister, and nothing in this scheme will extend or be construed to extend to give any person an absolute right to them."

But, as with the PCSPS before the changes in 1994, other provisions in the CSCS (including in sections 2 to 8 and section 10) are expressed in terms of entitlement: see e.g. rule 2.1 set out above.

59. The change in 1994 to hive the CSCS off from the PCSPS therefore left the basic pattern for provision of benefits unchanged from what it had been when the 1972 Act was enacted. As before 1994, all benefits under the PCSPS and CSCS, whether payable as a matter of legal or administrative entitlement, were paid without exception. In light of the interpretation of section 2(3) of the 1972 Act as amended set out above, therefore, those benefits under the CSCS in relation to redundancy, compulsory early retirement and the like, which are defined by reference to length of service or contributions paid, all attract the protection of section 2(3). The Claimant's agreement is required before the terms governing the amount of those benefits may be altered.

60. For these reasons, the Claimant's application for judicial review succeeds and the amended CSCS falls to be quashed. Consideration will now need to be given to what any quashing order should say and how far the effects of this judgment extend. The parties should consider the terms of the order which they propose should be made in the light of this judgment. Any outstanding area of dispute in relation to the terms of the order can be referred back to the court for determination.

61. Since I have accepted the Claimant's primary case based on section 2(3) of the 1972 Act, it is neither necessary nor appropriate to consider its alternative case based on an alleged breach of legitimate expectation, nor the other alternative cases it presented in relation to the operation of section 2(3) of the 1972 Act.

Response to DFP Committee on Amendments to Superannuation Bill - 5 September 2012

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10 September 2012

Response to the DFP Committee on the Potential Amendments to the Superannuation Bill

Dear Shane,

Following the Evidence Session on 5 September in relation to the Superannuation Bill it was agreed that officials would provide written comments on the potential amendments to the Superannuation Bill from the Committee. The comments and views of the Department are set out below.

The first amendment relates to placing the focus on "negotiation" rather than "consultation". The Department considers that consultation rather than negotiation is appropriate. It should be noted that consultation will be undertaken with a view to reaching agreement with the persons consulted.

The rationale behind this stance is primarily based on the legislative framework for all public sector pension legislation which pertains in Northern Ireland (and indeed Great Britain). Consultation is the term which is used in the 1972 Superannuation Order (Northern Ireland). This Order imposes a statutory duty under Article 3(2) on the Department to consult with persons appearing to the Department to represent persons likely to be affected by the proposed scheme. The Department's amendment under Article 4(3) of the 1972 Order inserts a further statutory duty to consult with a view to reaching agreement with the persons consulted. The consultation should take place with representatives of persons likely to be affected by changes to pension and compensation schemes before changes are made.

If this stance was to change and the term negotiation be deployed, it would be a significant departure from the legislative framework outlined above. It should be noted that there is case law, in the context of judicial reviews, as to what constitutes an adequate consultation process; however, there is nothing equivalent in relation to a negotiation process. The Northern Ireland Assembly Research and Information Service Report Paper of 31 August 2012 highlighted an apparent absence of any statutes that impose a duty on a Minister or Department to negotiate. This suggests that the introduction of such a duty - i.e. to negotiate rather than consult - would be a novel approach.

A Pensions Forum was established in October 2011 and the Terms of Reference to move this to a consultative body were agreed on 21st June 2012. This Forum will provide a means

to consult with Northern Ireland Civil Service Trade Unions at the earliest opportunity and at the most appropriate level on any proposed changes to the Home Civil Service pension and compensation arrangements in Great Britain which could have an impact on the arrangements for the Northern Ireland Civil Service. It must be emphasised that the Terms of Reference were written and agreed to facilitate a constructive two-way engagement between the Department and Trade Union Side and to establish it as a primary method of consultation with the aim of reaching agreement on any changes to pension and compensation scheme arrangements. The Department is both willing and able to give the assurance that the obligation to consult will be real and meaningful.

The Department's officials have stated that they will formally consult with Trade Union Side on proposed legislation to amend the compensation scheme in line with this requirement. In fact consultation has already commenced. This is in keeping with the legislative provision and the requirement for appropriate and meaningful engagement with the Trade Unions through a consultative process.

Timing is important for consultation to be effective and engagement has been and will continue to be undertaken in a timely manner with the Trade Unions. It should be noted that as well as the Northern Ireland consultation process, the seven nationally recognised trade unions in the civil services (PCS, POA, Prospect, FDA, NIPSA, Unite and GMB) are now part of a new National Trade Union Committee which provides these unions with a means to co-ordinate consultation centrally with the Coalition Government on proposed reforms at formative stages.

On a final point, replacing consultation with negotiation would also change the nature of the engagement with the unions and also the substance of the new reporting arrangements which are proposed under Clause 3 of the Bill. To be consistent, if negotiation were to be adopted then the report would be required to detail the negotiations which took place.

The second amendment proposed by Committee relates to the measure of Assembly control; the amendment seeks to introduce a negative resolution process for secondary legislation in relation to any detrimental change to the Compensation Scheme; or, alternatively, to introduce the requirement for the approval of the Assembly.

The legislative procedure for amending the Civil Service Pension Scheme is different to the other Northern Ireland Public Service Pension Schemes, as the other schemes are subject to negative resolution. It is therefore important to understand the origin of the Civil Service arrangements. The subordinate legislation process for the Department of Finance and Personnel relates back to the review of the superannuation arrangements that commenced in 1968 in Great Britain and was given effect to in the 1972 Superannuation Act in Great Britain and the 1972 Superannuation Order in Northern Ireland. This was the outcome of work completed and agreed by a Joint Superannuation Committee of the National Whitley Council to move benefits from a discretionary basis and stated that they should be "promulgated by administrative act of the relevant Minister".

Four important safeguards were put in place to ensure that these new arrangements would be operated properly. First, any amendment to the scheme would require genuine consultation with "staff interests" meaning the National Whitley Council; secondly, "staff representatives" would have to agree to any worsening to pensions in payment or pension rights already accrued; thirdly, the Act allowed the scheme to give a legal entitlement to benefits and, finally, any scheme would have to be laid before Parliament (even if Parliamentary approval was not required).

The second of these safeguards – the need for union agreement is the only area which will be impacted by the Bill – and then only in relation to the proposed changes to the Compensation Scheme. This safeguard is commonly termed the union veto and only exists in Northern Ireland in relation to the Civil Service. It does not apply to any other public sector pension scheme in Northern Ireland or in Great Britain.

When the legislation was amended in Great Britain to remove this union veto, it was replaced with the requirement to produce a report. This report must specify the consultation that took

place for the purposes of Article 3(2) of the Order, so far as relating to the provision; the steps taken in connection with that consultation with a view to reaching agreement in relation to the provision with the persons consulted, and whether such agreement has been reached.

The view of the Department is that this reporting requirement will provide for a level of accountability and an audit trail, which will be open for Assembly and public scrutiny. The requirement to produce and publish such a report is, to the knowledge of officials unusual, and continues to set the Civil Service apart from the other public sector pension schemes in Northern Ireland and Great Britain.

The alternative proposal to strengthen the reporting arrangements which the Committee has suggested is the requirement for a draft of the scheme to be laid before and approved by resolution of the Assembly. This approach would be out of harmony with the level of Assembly scrutiny required elsewhere in regard to regulations in respect of pensioners for Local Government employees (Article 9), Teachers (Article 11) or Health Service employees (Article 12) of the Order, all of which are subject to negative resolution.

The introduction of the report therefore does provide an extra level of assurance within the framework which underpins the Superannuation Order. The Department therefore will not be supporting this amendment.

The third amendment being considered by Committee relates to the reporting requirements. The Department welcomes the reference in the amendment to consultation; however, as already referred to, the Department is committed to and has a statutory obligation to consult with a view to reaching agreement on any provision of the scheme made under Article 3 of the 1972 Order that would reduce the amount of a compensation benefit. The report therefore would demonstrate and provide transparency of the Department's commitment and endeavours to this process and the issues which have been proposed by the Committee would be covered in the detail of the report.

The Report which officials must provide to the Assembly on the consultation undertaken will require officials to record and demonstrate that the appropriate steps have been taken to try to secure agreement. The requirements of the reporting procedures are robust in that the reporting duties specify that before the scheme comes into operation, the Department must have laid before the Assembly a report providing information about the consultation that took place for the purposes of Article 3(2), so far as relating to the provision; the steps taken in connection with that consultation with a view to reaching agreement in relation to the provision with the persons consulted, and whether such agreement has been reached.

To enable the Department to provide the detail above, officials will be required to specify the consideration given to all issues raised during the consultation, the detail of any changes made to the provisions of the scheme as a result of the consultation and the time period required to complete a full comprehensive consultation. In summary, as the requirements in the amendment are already inherently a requirement under Clause 2 the Department will not be supporting this amendment.

In conclusion, for the reasons stated, the Department does not support any of the potential amendments to the Superannuation Bill submitted by the Committee.

Yours sincerely,

NORMAN IRWIN

Appendix 4

Written Submissions

Equality Commission

The Superannuation Bill
Summary Briefing for the Committee for Finance and Personnel
May 2012

Background

The Superannuation Bill will amend the Superannuation (NI) Order 1972 so as to remove the existing requirement for the Department of Finance and Personnel (DFP) to secure the consent of trade unions before introducing changes to the Northern Ireland Civil Service (NICS) Compensation Scheme. It also places a new duty on DFP to report to the Assembly on its attempts to reach an agreement with trade unions in relation to the changes to the NICS Scheme.

The Superannuation Bill does not directly fall under the remit of the anti discrimination legislation per se.

DFP has carried out a screening exercise on the Superannuation Bill in line with its commitments under its equality scheme. It has concluded that there is no impact on equality of opportunity for those affected by its policy, for each of the Section 75 equality categories, and as a consequence, has decided not to conduct an equality impact assessment.

ECNI Views

NICS Responsibilities in Terms of Age Discrimination

It is essential that DFP ensures that a revised NICS Compensation Scheme does not unlawfully discriminate on any protected equality ground, contrary to the anti-discrimination legislation.

Particular consideration should be given to ensuring compliance with the age equality legislation (namely the Employment Equality (Age) Regulations (NI) 2006).
This legislation allows employers to provide redundancy schemes which mirror the statutory redundancy scheme contained in the Employment Rights (NI) Order 1996 and to offer more generous terms. Employers do not have to objectively justify enhanced redundancy payments based on length of service, provided they are calculated in the same way as statutory redundancy payments. However, it is of note that statutory rights under the Employment Rights (NI) Order 1996 do not apply to civil servants.
If an employer uses age or length of service in a different way that is not related to the statutory redundancy scheme, it may amount to unlawful age discrimination, unless it can be objectively justified.

NICS S75 Equality and Good Relations Responsibilities

DFP has carried out a screening exercise on the Superannuation Bill in line with its commitments under its Equality Scheme. It has concluded that there is no impact on equality of opportunity for those affected by its policy for each of the Section 75 categories, and, as a consequence, decided not to conduct an equality impact assessment.

Furthermore, in line with its duties under Section 75, and its commitments under its equality scheme, DFP must consider, when bringing forward a revised NICS Compensation Scheme, the equality implications of changing the current arrangements under the NICS Compensation Scheme. If as a result of equality screening, DFP identifies that the proposed revised NICS Compensation Scheme is likely to have a major impact on equality of opportunity (or good relations) for a Section 75 category, then it should consider undertaking an equality impact assessment.

The primary function of the equality impact assessment is to determine the extent of any differential impact of a policy upon the Section 75 categories and to determine if the differential impact is an adverse impact.

It is important that the likely impact of proposed amended NICS Compensation Scheme on the promotion of equality of opportunity is considered at the start of the policy development process, rather than when the policy has been established. In addition, the Commission recommends that all public authorities monitor more broadly than strictly for adverse impact, and monitor policies to identify opportunities to better promote equality of opportunity and good relations for the relevant Section 75 categories.

Equality Commission for Northern Ireland
May 2012

Superannuation Bill 2012

Briefing to Finance and Personnel Committee

The Northern Ireland Human Rights Commission (NIHRC) pursuant to Section 69 (1) of the Northern Ireland Act 1998 reviews the adequacy and effectiveness of law and practice relating to the protection of Human Rights. In accordance with this function the following statutory advice is submitted to the Finance and Personnel Committee of the Northern Ireland Assembly.

Outline

The Commission's briefing will address:

- The issue of parity with the Superannuation Act 2010
- The proposal to remove the existing requirement for government to secure trade union agreement and to replace it with a duty to consult with a view to reaching agreement before making changes to the compensation scheme for civil servants
- The consequences of the Bill with regards to changes to the existing compensation scheme
- The proposed duty on government to lay a report before the Assembly on the consultation with trade unions

Parity

Notwithstanding the consequences of breaking with parity, the obligation to protect the human rights of people in Northern Ireland rests with the devolved Northern Ireland Administration. The implications of the Bill must be considered in light of the socio-economic situation of Northern Ireland.

Removal of duty to seek trade union consent

The Commission advises that the proposal to remove the duty to seek trade union consent risks regression in the protection of the following rights:

The right to form and join trade unions for the promotion and protection of economic and social interests – Article 8, International Covenant on Economic, Social and Cultural Rights

The Labour Relations (Public Service) Convention, International Labour Organisation, Convention No. 151

The right to organise and to join organisations for the protection and promotion of economic and social interests – Article 5, European Social Charter

The right to collective bargaining – Article 6, European Social Charter

Changes to the Compensation Scheme

The Commission advises that the proposed changes to the Compensation Scheme should be considered in the context of the current economic climate, in which a lower redundancy compensation package is met with fewer job opportunities and far-reaching changes to the welfare. In that context the following human rights are engaged:

The right to an adequate standard of living – Article 11, International Covenant on Economic, Social and Cultural Rights

The right to peaceful enjoyment of one's possessions – Protocol 1, Article 1, European Convention on Human Rights

Role of the Assembly

In order to help ensure adequate human rights protections the Commission advises that the Assembly, as an institutional reflection of democratic rights – Article 25, International Covenant on Civil and Political Rights – ensures a robust role for itself in considering the report to be laid which will outline the consultation process with the trade unions.

CIPD response to NI Assembly on Superannuation Bill

Call for Evidence on scrutiny of the Superannuation Bill

Submission to the Committee for Finance and Personnel, Northern Ireland Assembly

Chartered Institute of Personnel and Development (CIPD)

May 2012

Background

1. The CIPD is the leading independent voice on workplace performance and skills. Our primary purpose is to improve the standard of people management and development across the economy and help our individual members do a better job for themselves and their organisations.

2. Public policy at the CIPD exists to inform and shape debate, government policy and legislation in order to enable higher performance at work and better pathways into work for those seeking employment. Our views are informed by evidence from 135,000 members responsible for the recruitment, management and development of a large proportion of the UK workforce.

3. Our membership base is wide, with 60% of our members working in private sector services and manufacturing, 33% working in the public sector and 7% in the not-for-profit sector. In addition, 76% of the FTSE 100 companies have CIPD members at director level. We draw on our extensive research and the expertise and experience of our members on the front-line to highlight and promote new and best practice and produce practical guidance for the benefit of employers, employees and policy makers.

General comments

4. We have spoken to our senior panel of our member practitioners with regard to the issue of redundancy. They brought up a range of different points that need to be considered by organisations planning to make redundancies, which are listed below.

5. When it comes to costs, an organisation needs to consider how generous they can afford to be. This will inevitably depend on the circumstances it faces. If there is a general downturn for its goods and services it may have less money and so cannot afford to be too generous. However, if there is a downturn only for a particular good or service within the company, then the organisation could afford to be more liberal when making employees redundant.

6. A firm might also consider how its own redundancy package compares with those being offered by other organisations. This can be a significant concern for an employer that wishes to protect its customer, media and employer brands. Within the public sector, a potential major concern may revolve around not wishing to be seen as too generous with tax payers' money, but likewise not wishing to look so parsimonious that it reflects badly on its employer brand.

7. An organisation will need to consider the purpose of the redundancy payment. For example, is it to reflect past loyalty and performance, a financial cushion until the ex-employee finds new employment or a signal to remaining staff about the organisation values its workers?

8. Employers may be concerned about setting a precedent or expectation amongst employees about the deal they could therefore expect to get if they are made redundant, or choose to take redundancy. Organisations should think carefully about how they would deal with such a situation, should it arise.

9. The contents of the redundancy package should also be carefully considered and organisations would be wise to think quite broadly about this. For example, they should consider the costs of outplacement services (such as CV writing and interview techniques), and the costs of any re-skilling, rather than focusing solely on the size of the redundancy package itself.

10. As firms increasingly shift away from Defined Benefit to Defined Contribution pension schemes, fewer of them will be able to offer early retirement provisions on an actuarially retired basis.

11. With regard to the proposed changes, the new NICSS will be more generous than many private sector employees could expect to enjoy. Among larger organisations the typical redundancy pay package ranges from between 1.5 weeks per year of service up to 3 weeks, with larger 'blue-chip' employer paying around 4 weeks.

12. One of our Northern Ireland members shared the following approach to redundancy at their large firm, informing us of the following. This organisation:

    - always considers offering other employment, or retraining, as a more cost-effective option to a leaver or redundancy payment.

- aims to reduce the number of employees on a voluntary basis.
- would need to agree a supporting business case with HR if they meet the legal definition of redundancy
- will only consider any decision to pay leaver payments in the light of the business unit and overall resource plans.
- will decide who to offer a leaver payment to and the last day of service.
- does not offer pay in lieu of notice as leaver and redundancy payments are voluntary.
- will not buy back annual leave unless it needs to meet the statutory requirements of the Working Time Directive or in exceptional circumstances.
- provide leaver payments equal one months' pay per length of service up to a maximum of six months pay (12 months in very exceptional circumstances).

CIPD Further Response

Dear Jim

We've just had a response to our communication to members about your inquiry – in case this is of interest.

Best Wishes

Genevieve

Genevieve Bach
Public Affairs

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At this firm, no reference is made to redundancy terms to new employees. If they make any new employees redundant, they apply statutory terms but ensure that no employee leaves the company with less than 4 weeks actual pay.

Some employees who have been with the organisation for over 10 years come under an older redundancy agreement, which was more generous that statutory scheme.

Management Severance Terms

Explanation of Calculation:

- Age 44 and below: 2 weeks pay per year of continuous service
- Age 45 – 54: **2 ½ weeks** pay per year of continuous service
- Age 55 and over: **3 weeks** pay per year of continuous service

Redundancy payments, together with notice, whether the notice is worked or paid in lieu, will not exceed 104 weeks' pay. Where the calculation is more than 104 weeks, PILON will be paid first and then this will be topped up by redundancy pay to make 104 weeks.

Non-Management Severance Terms

Explanation of Calculation:

There are two elements that make up the severance pay - statutory and additional payments.

Statutory payments

- For each complete year of continuous service between the ages of 18 and 21 - **0.5 week's pay**
- For each complete year of continuous service between the ages of 22 and 41 - **1 week's pay**
- For each complete year of continuous service over the age of 41 - **1.5 weeks' pay**

NB: Anyone with less than 2 years' service is ineligible (but note agreement to calculate to end of contractual notice). There is also a maximum of 20 years' service and 30 weeks' pay. A year of service that spans two bands is reckoned to be in the lower category..

Additional payments

- Up to and including 5 years' continuous service - 1 week's pay for each year of service
- 5 – 20 years' continuous service - **1.5 weeks'** pay for each year of service over 5 years
- Over 20 years' continuous service - **2 weeks'** pay for each year of service over 20 years

Minimum Payments

These payments are made to staff with short service. The minimum number of weeks' pay to which staff are entitled is linked to the number of year's service, as follows:

- Less than 1 year's service - **4 weeks pay**
- 1 year's service but less than 2 - **5 weeks pay**
- 2 year's service but less than 3 - **6 weeks pay**
- More than 3 years service - **7 weeks pay**

Trade Union Submission on Superannuation Bill for Assembly Finance and Personnel meeting on 4th July 2012

1. When the trade unions addressed the meeting of the Committee on 27th March 2012 we made the case against the adoption of the Superannuation Bill. The thrust of the trade union case was that in the current environment there was no necessity to introduce the Bill.

2. The main purpose of the Bill is to remove the trade union "veto" over any changes to the redundancy compensation provisions which involved a detriment. This follows the introduction of equivalent legislation in Britain following a legal ruling that detrimental changes to the compensation arrangements could not be made without the agreement of the trade unions. The Coalition Government decided to legislate to remove this legal impediment.

3. Effectively this Northern Ireland Superannuation Bill seeks to achieve the same objective i.e. to provide for a worsening of the compensation provisions without the trouble of having to secure trade union agreement.

4. At the meeting of the Committee on the 27th March the trade unions argued that in the current economic climate and the difficult employment situation in Northern Ireland any attempt to diminish the redundancy provisions was unacceptable and unfair.

5. In response to the argument that the same arrangements that pertained in Great Britain should apply to civil servants in Northern Ireland the trade unions made the following points:-

   (a) That strict parity in pay and other terms and conditions did not actually apply as pay, for example, was negotiated in Northern Ireland following a previous UK government decision to dismantle the national civil service centralised pay and terms and conditions system and delegate powers of pay determination to individual government departments. In this context the NI Civil Service was treated as a separate department for the purposes of pay determination.

   (b) There was a special case in the context of redundancy compensation for the NI Civil Service to recognise that employees who were made redundant should be treated as generously as possible. The point was also made that decent voluntary redundancy compensation provisions could attract sufficient volunteers thus avoiding recourse to compulsory redundancies.

   (c) That expensive redundancy provisions actually constituted a disincentive to making redundancies.

   (d) That in light of the future potential for redundancies and the uncertain future for many staff now was not the appropriate time to introduce detrimental changes to the redundancy compensation provisions.

6. In making the case for no change the trade unions did suggest that as an alternative to introducing the Superannuation Bill they would be prepared to enter into negotiations with the Management Side of the NI Civil Service on the redundancy compensation provisions. At a meeting of the NI Civil Service Pensions Forum the trade unions made the offer of negotiations on the terms of any new compensation scheme but DFP officials advised that their position was that the Great Britain changes to the Compensation Scheme should apply in the NI Civil Service and in order to give effect to these changes the removal for the trade union "veto" was necessary and thus the Superannuation Bill was required to be adopted.

7. This is despite the terms of the proposed new provision at Article 4 Clause 2 which only provides for consultation with a view to reaching agreement and for a report to be placed before the Assembly providing information on the consultation that has taken place.

8. The trade union experience of the quality of consultation over many years has in many instances raised our concerns about the meaningfulness of those consultations. The disregard by public bodies of views received as a result of public consultation exercises does not give us any confidence that our views will be taken into account in any real way.

9. The Assembly Research paper provided is very helpful but it does highlight the different approaches to the meaning of "consultation". The trade union view is that changes to negotiated terms and conditions of employment should be the subject of negotiation not just consultation. In the current overarching political climate where "Labour" has for decades been under attack from the neo-liberal, market oriented interests both inside and outside government. "Labour", and working people generally, has been conducting a defensive campaign to protect workers' rights and terms and conditions of employment. Detrimental changes to redundancy compensation represent a further attack on workers and their families.

10. If the Bill is passed into legislation there will be no negotiations and the detrimental changes will take effect. That is why we are asking that the Bill be withdrawn and for our offer to negotiate to be taken on board by the Department of Finance and Personnel.

Appendix 5

Other Papers

Managing Early Departures in Central Govenerment

National Audit Office

REPORT BY THE COMPTROLLER AND AUDITOR GENERAL

HC 1795
SESSION 2010–2012

15 MARCH 2012

Cabinet Office

Managing early departures in central government

Key facts

17,800

employees who left central government bodies early, in the year from 22 December 2010, under the revised Civil Service Compensation Scheme

£600m

gross initial cash cost to departments of payments for these 17,800 employees under the revised Scheme

£400m

annual reduction in civil service paybill from these departments, after meeting the initial costs of compensation and early access to pension

Departments, as a group, should achieve payback from the 17,800 early departures in a period of **11–15 months**

Payback period is the time by which the salary and other cost savings have paid off all the initial costs (not including administration costs) of departures. A payback period of 11 months is possible only if all IT, support services and property on-costs of employment are eliminated within the year, which is highly uncertain

The taxpayer overall should achieve payback in **10–16 months**

This introduces allowance for re-employment, pension and tax effects

The net present value to the taxpayer, over the spending review period to March 2015, of the 17,800 early departures should be in the range **£750 million to £1,400 million**

The higher end of the range is possible with greater success in eliminating on-costs

The savings achieved by the revised Civil Service Compensation Scheme by comparison with the old are **40–50 per cent**

Summary

1 The 2010 Spending Review required government departments to make significant administrative cost savings as part of reducing the deficit. Staff costs typically make up around half of administration budgets and almost all departments are planning staff cost reductions, largely through reducing the number of employees. The Cabinet Office estimates that the civil service will reduce by around 114,000 full-time equivalent staff (23 per cent) between 2010 and 2015.

2 We define 'early departures' to include voluntary early exit (including with early access to pension), voluntary redundancy and compulsory redundancy. Voluntary exits allow departments flexibility in the tariff they can offer staff and can be agreed without formal staff consultation, while a 90-day consultation period is required before a voluntary redundancy scheme. From December 2010, the revised Civil Service Compensation Scheme (the revised Scheme) capped compensation payments at 21 months' pay for voluntary exits and redundancies, and 12 months' pay for compulsory terms.

3 This study examines the potential for government departments to achieve savings from early departures over the period of the spending review; and to sustain value-for-money savings over the longer term. To do this we:

- set out the available information on the scale and impact of the planned departures on the civil service;
- model the cash flows from departures completed under the revised Scheme in the year beginning 22 December 2010; and
- consider how well placed departments are to make informed decisions, and manage risks to value for money.

4 This report is concerned with early departures, from central government departments and other bodies, of staff who are members of the Principal Civil Service Pension Scheme. It does not cover devolved administrations. It also does not examine the large programmes of early departures that are under way in other public sector bodies, including local authorities, the NHS, police and armed forces. The data we have used also exclude a number of other small public sector pension schemes, including those for the Security Service and Secret Intelligence Service.

Key findings

The scale and impact of early departures

5 Against the background of a general downward trend, departments are front-loading early departures into the first half of the spending review period. Since 2004, there has been a downward trend in the size of the civil service from a peak of 538,000 to 444,000 in September 2011. There has also been a centrally driven recruitment freeze on all except 'business-critical' or 'front-line' staff since May 2010. Scheme data show around 17,800 early departures in the year beginning 22 December 2010, when the revised Scheme came into force.

6 Some departments, for example the Department for Work and Pensions, had experience of releasing large numbers of staff, but for others the numbers involved are unprecedented. Not all departments are reducing staff. Of those that are, the proportion of staff taking early departure during 2011 ranges from less than 1 per cent at the Department of Energy and Climate Change to around 16 per cent at the Department for Communities and Local Government.

7 The data show older, more senior staff taking early departures first, leaving the civil service with a younger profile. This is partly a result of top-down restructuring, but also because those over 50, with longer service, gain most financially from taking voluntary exit or voluntary redundancy. It is too early to see any effect on the civil service's gender and ethnic profile, with equality impact assessments not complete. London has seen the greatest number of staff leaving, with 3,200 early departures in 2011, compared with less than 900 in the North East.

Costs and savings of early departures

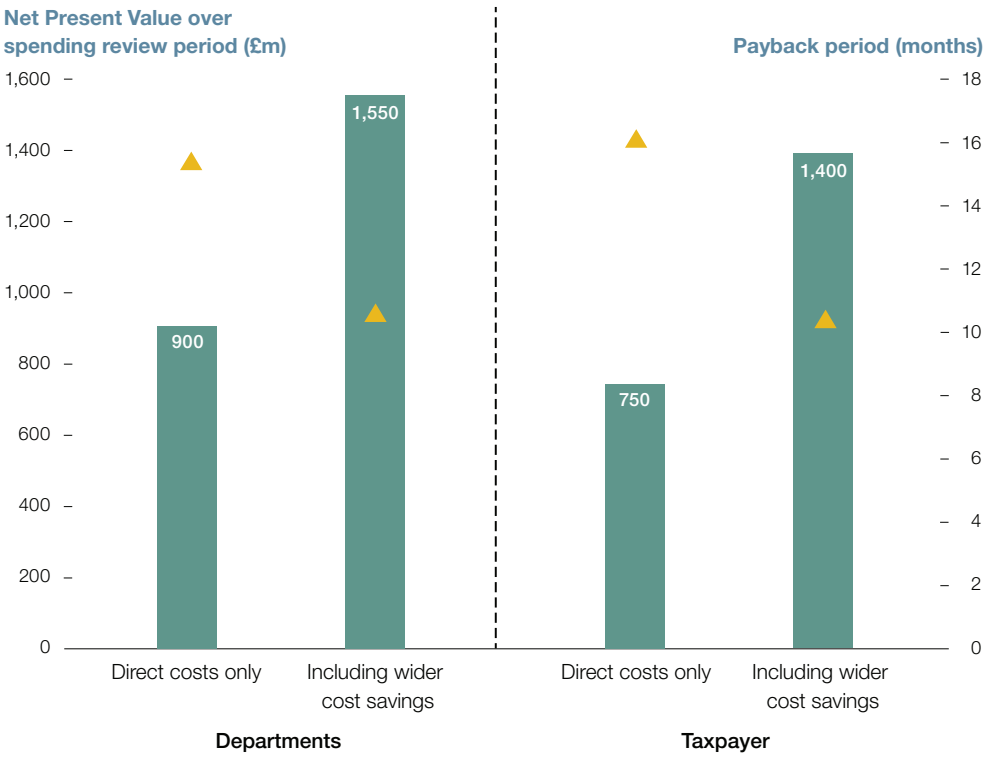
8 Departments paid an estimated total of £600 million gross to release the 17,800 employees who left early under the revised Scheme during 2011. These costs are around 45 per cent lower than they would have been under the previous Scheme. However, there were no estimates of the administration or other costs of managing the departures.

9 Departments will save an estimated £400 million a year on the civil service paybill after meeting these initial costs. The time it takes them to start seeing net savings depends on how quickly they can eliminate wider headcount-related costs. Cabinet Office data suggest that in addition to salary, the 'on-costs' of employing an individual are around 80–100 per cent of that salary, of which 25 per cent for national insurance and pension contributions is already included in our model. If departments began to save the remaining on-costs immediately, this would mean extra savings of at least £180 million a year in addition to the £400 million in paybill, and a payback period of 11 months.

10 IT cost savings, which the Cabinet Office estimates at around £2,000 per head or £35 million, may be quickly achieved, depending on the terms of IT contracts. But our recent work shows that fixed or semi-variable property-related costs will be slower to eliminate. If none of the on-cost savings are achieved the payback period would be 15 months. Departments should achieve an estimated net present value over the spending review period of £900 million–£1,550 million (**Figure 1**).

11 For the taxpayer overall there are additional costs, over longer timescales, and payback may range from 10 to 16 months. Departments are responsible for managing only their own direct costs. But the scale of the early departures means the cash effects on the Principal Civil Service Pension Scheme itself, and on the tax and benefits system, are also significant. We modelled the combined cash flows to departments, the Scheme, HM Revenue & Customs and the Department for Work and Pensions. The net present value of the 17,800 departures to the taxpayer, we estimate at £750 million–£1,400 million over the spending review period, depending on departments' success in realising the on-cost savings discussed above.

Figure 1
Financial effects of 17,800 early departures



Source: National Audit Office

12 The financial benefit to the taxpayer of the early departures is affected by whether people leaving (and not taking pension) find comparable work and pay tax, or claim benefits. Based on 2011 official data we assume just over half of leavers not taking pension find work within a year, and between 90 and 100 per cent within three years, depending on age. If the average likelihood of finding comparable employment was 20 per cent worse, the net present value to the taxpayer would fall by between 5 and 10 per cent. Up-side sensitivity suggests that if job prospects improve, net present value could rise by 4 per cent maximum.

Managing early departures

13 Departments used large-scale open voluntary exit schemes to release staff as early as possible. They aimed to deliver savings quickly and minimise uncertainty for staff. In doing so, they had to balance the benefits of moving quickly against those of spending more time consulting staff, considering cheaper alternatives to paid departures, and understanding skills requirements.

14 Departments agreed funding for early departures as part of settlements with the Treasury based on pressures and reforms in their areas, but these were rough early estimates not based on detailed workforce planning. Departments agreed these settlements before completing detailed plans for cost reduction, and their estimates were uncertain because they could not accurately predict the take-up of voluntary departure. For some, early departures were part of normal non-ring-fenced budgets, while for others, funding was ring-fenced and had to be used within a fixed time period.

15 Most departments had no plans for transforming their business and headcount reductions were driven solely by a target to reduce administration costs. A few departments, including the Department for Work and Pensions and the Home Office, already had restructuring plans and had begun work on cost-reduction strategies. Others brought forward plans to move services online or reorganise service delivery with fewer staff. Unless departments now embed redesign of their businesses, there is a risk that the workforce will increase again once the urgency for cost reduction abates.

16 Departments' processes for handling early departure applications were generally well considered and used business-led criteria to decide who to release. Governance, including peer-review, sign-off at permanent secretary level where necessary, and internal audit review, was reasonable. Departments generally communicated regularly and openly with staff, and followed good-practice protocols on periods of consultation.

17 Coordination from the centre of government on early departures was minimal, creating duplication of work in HR departments. Moreover, the arrangements for redeploying staff from one department or agency to another are inconsistent, and cannot ensure best use of skills. Since April 2011, Civil Service Resourcing has been developing central recruitment, assessment and redeployment services for the civil service as a whole. There is potential to secure value-for-money savings by rolling out these services, but progress so far has been limited by complex accountability arrangements and a short-term funding model.

18 Departments' decision-making about departures has been restricted by poor information on skills and performance. Data across the civil service on skills are generally inadequate, and largely self-reported by staff. Performance data, though reasonably robust for senior civil service staff, are less good for junior grades, generally lacking enough detail to separate staff for retention/departure purposes. A good-practice performance appraisal process for junior staff is now available but has not yet been adopted across government.

19 Departments experienced delays in obtaining estimates, from MyCSP, the civil service pension scheme administrator, of the cost of releasing individuals. The dramatic increase in demand from departments for thousands of estimates, as they worked through different workforce scenarios, came at a time when the Cabinet Office was reorganising MyCSP. Service levels were also affected by the quality of information provided by departments themselves.

Conclusion on value for money

20 Departments have taken rapid action to reduce headcount, bringing forward significant savings over the spending review period. The short-term costs of this action are around half what they would have been under previous compensation terms. After the initial cash costs of releasing staff have been recovered, these early departures should reduce the annual paybill by £400 million. There is significant scope for further headcount-related cost savings but it is not clear how much of these additional savings departments will achieve. The size of the net benefit to the taxpayer in the short term also depends on whether other sectors can provide alternative employment for those leaving.

21 A great deal of public money will have been spent in achieving these headcount reductions. To deliver the expected savings, staff numbers must stay at their reduced levels during the payback period discussed in paragraphs 9-10. To deliver permanent benefits, and sustain longer-term value-for-money improvements, the numbers need to stay reduced even when the economic situation eases. This means departments need to migrate to a new, lower staffing model, which will probably be information-led, and which is flexible enough to handle increased volumes of activity without either adversely affecting services, or requiring a significant staff number increase. Departments should formally commit to such new models so they can be held to that commitment over the economic cycle.

Recommendations

For the centre of government

a **Central coordination of early departures is minimal. If the opportunity to embed fundamental change to the civil service staffing model is not to be lost, the new Head of the Civil Service should work with permanent secretaries to provide strategic oversight, including actively monitoring:**

- departments' current and planned staffing levels and workforce shape, drawing on appropriate benchmarks for different business areas;
- an overall, as opposed to a department-level, view of the costs and savings to the public purse, as set out in our model; and
- the effect of early departures on the civil service's skills, experience and equality profile, to identify any erosion of capability and equality gains.

b **Given the potential benefits of the centralised services of Civil Service Resourcing, this group must have a clear mandate to roll them out across government.** The Cabinet Office should ensure it has clearer accountability arrangements, a firm financing model for at least three years, and a ministerial reporting line.

For departments

c **Departments have used widely scoped voluntary departure schemes because they had not finalised detailed workforce planning. This has made it harder to control workforce changes.** Departments should now move quickly to finalise future workforce models and review progress, adjusting further departure plans accordingly.

d **Workforce data, particularly on skills and experience, are still inadequate, but departments have collected valuable information as part of departure applications.** Departments should build on this to improve their understanding of capability, and work with Civil Service Resourcing and Civil Service Learning to keep it current, useful and consistent across the civil service.

e **Performance information on junior staff lacks detail to inform decisions about early departure applications.** Departments should move quickly to adopt the best-practice approach set out by Civil Service Employee Policy. This would improve the quality and consistency of performance information, and hence performance management.

Superannuation Bill Committee Stage

HOUSE OF COMMONS
LIBRARY

Superannuation Bill: Committee Stage Report

Bill No 58 of 2010/11

RESEARCH PAPER 10/60 8 October 2010

Clause 1 of this Bill would cap compensation payable under the Civil Service Compensation Scheme at a maximum of 12 months' pay for compulsory redundancy and 15 months' pay for voluntary exits. Clause 2 provides for clause 1 to expire after 12 months unless repealed, extended or revived using order-making powers. The Conservative-Liberal Democrat Coalition Government invited the civil service unions to negotiate a "sustainable and practical and practical long-term successor scheme". On 7 October, the Government announced that it had concluded its negotiations with five of the six unions on a new scheme.

The Bill passed its Second Reading in the Commons on 7 September. It was considered in Public Bill Committee in four sittings, on 14 and 16 September. It was not amended. Report Stage and Third Reading are scheduled for 13 October.

Djuna Thurley

Recent Research Papers

10/45	The 'AfPak policy' and the Pashtuns	22.06.10
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10/51	Unemployment by Constituency, August 2010	12.08.10
10/52	Identity Documents Bill: Committee Stage Report	18.08.10
10/53	Equitable Life (Payments) Bill [Bill 62 of 2010-11]	18.08.10
10/54	Fixed-term Parliaments Bill [Bill 64 of 2010-11]	26.08.10
10/55	The Parliamentary Voting System and Constituencies Bill [Bill 63 of 2010-11]	01.09.10
10/56	Superannuation Bill [Bill 58 of 2010-11]	01.09.10
10/57	Economic Indicators, September 2010	07.09.10
10/58	Unemployment by Constituency, September 2010-09-15	15.09.10
10/59	Economic Indicators, October 2010	05.10.10

Research Paper 10/60

Author: Djuna Thurley, Business and Transport Section

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Summary

The Civil Service Compensation Scheme (CSCS) sets out the payments which can be made when the employment of a civil servant is terminated early – for example, on compulsory or voluntary redundancy. The current terms available on compulsory exits, which are the most generous, generally provide an age and service-related severance payment (subject to a maximum of three years' pay) for people under 50, and enhanced early retirement packages for people aged between 50 and 60.

The Labour Government attempted to reform the CSCS. However, its amendments to the scheme, agreed in February 2010 with five of the six civil service unions, were quashed as a result of an application for judicial review by the sixth and largest union, the PCS.

The Conservative-Liberal Democrat Coalition Government published its *Superannuation Bill 2010-11* on 15 July. This would cap payments under the CSCS at 12 months' pay for compulsory exits and 15 months' pay for voluntary exits, from the date of Royal Assent. Clause 2 would provide for clause 1 to expire after 12 months, unless repealed earlier, or extended or revived, using order-making powers. The Government said it hoped to negotiate a permanent and sustainable agreement with the civil service unions.

The unions argued that the February 2010 proposals should form the starting point for negotiations. They said the caps in the Bill would result in civil servants having redundancy terms which were "considerably worse than any other public servant."

The Bill passed its Second Reading in the House of Commons on 7 September 2010. The Labour Party voted against the Bill, as did four Liberal Democrat MPs and the Democratic Unionist Party, the Scottish National Party, Plaid Cymru, the Social Democratic and Labour Party and the Green Party.

The Public Bill Committee Stage consisted of four sittings on 14 and 16 September. The Bill was not amended. Labour Members said they might return to certain issues at Report, by which time some further progress might have been made in the negotiations between the Government and unions. Report Stage and Third Reading are scheduled for 13 October.

On 7 October, the Cabinet Office announced that it had concluded its negotiations with five of the six civil service unions. It intended that the new terms would supersede the current terms following the passing of the *Superannuation Bill*. It would work with the unions to implement the new terms as soon as possible. In terms of next steps, it said the union's executives were likely to seek the views of their members on the proposed new terms. The Government would table an amendment to the Bill to "remove the ability of a union to veto any changes to the compensation scheme." The PCS said it would demand further negotiations with the Minister, "setting out why the latest offer put forward is unacceptable."

1 Introduction

The Civil Service Compensation Scheme (CSCS) is a scheme made under the *Superannuation Act 1972.* It sets out the payments that may apply when the employment of a civil servant is terminated prematurely. The current CSCS terms are summarised as follows in the Explanatory Notes to the Bill as follows:

> The former CSCS terms, as now revived, generally provide a service and age-related payment for people aged under 50 and enhanced early retirement terms for people aged between 50 and 60. The amount of the payment varies depending on the tariff, with the tariff applying on compulsory redundancy providing payments of up to 3 years' pay and enhanced early retirement packages which can cost employers 6 years' pay. Redundancy terms for certain employees who joined before 1987 can lead to higher costs for employers.[1]

The Labour Government attempted to reform the scheme. In February 2010, it announced a set of reforms that had been agreed with five of the six civil service unions. Features of this new scheme included a limit in the maximum payment on compulsory redundancy of three years' pay, up to maximum of £60,000. Those earning between £20,000 and £30,000 would be eligible for severance payments of up to between two and three years' pay. For higher earners, payments would be capped at two years' pay. Those closest to retirement would retain entitlement to an immediate unreduced pension.[2]

The sixth and largest union, the PCS, did not accept the February 2010 proposals and applied for judicial review.[3] In May, the High Court ruled in its favour and the amendments to the scheme were quashed (with the exception of limited changes to elements of the CSCS deemed age-discriminatory).[4]

The *Superannuation Bill 2010-11* was introduced into the Commons on 15 July 2010.[5] Clause 1 would cap compensation payable under the CSCS at a maximum of 12 months' pay for compulsory redundancy and 15 months' for voluntary exits. Clause 2 provides for clause 1 to expire after 12 months, unless repealed, extended or revived using order-making powers. The Coalition Government said it wanted to negotiate a "sustainable and practical long-term successor scheme" with the civil service unions. Its view was that this scheme should include additional protection for the lower paid staff and a cap on the amount payable to higher earners. It did not expect there to be scope to vary the 12 month cap for compulsory payments, but signalled a willingness to negotiate on "the most suitable terms for voluntary departures."[6]

The Bill was given its Second Reading on 7 September 2010. The Public Bill Committee sat on 14 and 16 September, using all four sittings allotted to it. The Bill was not amended. The Labour Party indicated that it might return to certain issues at Report Stage, by which time further progress might have been made in the negotiations between the Government and unions. On 7 October, the Cabinet Office announced that it had concluded its negotiations with five of the six civil service unions (see section 4 below).

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[1] *Superannuation Bill* – Explanatory Notes, para 4

[2] HC Deb, 3 February 2010, c11-13WS; Cabinet Office, *Civil Service Compensation Scheme Reform: Response to "Fairness for All" consultation*, As updated on 2 February 2010 , Annex A

[3] PCS Press Release, '*National strike ballot gets underway',* 2 February 2010

[4] *The Queen (on the application of the Public and Commercial Services Union) and Minister for the Civil Service* [2010] EWHC 1027 ,10 May 2010

[5] Bill 58

[6] Letter from Rt Hon Francis Maude MP, Minister for the Cabinet Office and Paymaster General, to CCSU chairman, Paul Noon, 6 July 2010

A House of Commons Library Research Paper – *Superannuation Bill* (RP 10/56) provides briefing on the main provisions of the Bill and gives background information to the changes proposed therein. The progress of the Bill can be tracked on the *Superannuation Bill 2010-2011* section of the Parliament website.[7]

2 Second Reading

Opening the Second Reading debate on 7 September, Minister for the Cabinet Office, Francis Maude, explained that reform was needed because the existing CSCS was "unaffordable and unsustainable":

> It is now more than 20 years since the last serious reform of the compensation scheme and more than two years since the current reform process began, with an unchanged set of arrangements still in place. Frankly, that position cannot be allowed to continue. The current scheme is unaffordable and unsustainable. It allows for payments of up to three times annual salary or, for older workers, enhancements to pension and lump sum payments costing more than five times salary. For some, those enhancements can total as much as six and two thirds times annual salary. That compares with a maximum of 30 weeks' pay under the statutory redundancy scheme, with a weekly cap on the salary allowable of £380, giving a total of about £11,000.[8]

He said that under the existing scheme it was "prohibitively expensive to make redundant civil servants who are highly paid and long-serving", with the result that when savings had to be made, the burden fell "disproportionately on the lower-paid, more of whom lose their jobs than is necessary or desirable."[9]

He did not think the February 2010 scheme proposed by the Labour Government had gone "far enough." However:

> Had it come into effect...when the coalition Government took office in May this year, a pressing case would have been made to let it remain in force. Sadly, that option simply did not exist. PCS unilaterally, and without the support of the other five trade unions, sought and obtained judicial review and obtained an order that quashed the February scheme. The option of allowing the scheme agreed and negotiated by the last Government was removed from the table by PCS's unilateral action.[10]

The Coalition Government has said its aim is to negotiate a new scheme with the civil service unions, which would include "proper additional protection for the lower paid" and a "cap on payments for the highest paid."[11] The Minister said it was a myth that all civil servants were highly paid:

> It is one of the great myths - I have sometimes heard this expounded even in this august House - that all civil servants are highly paid. That is simply not the case. [...] the average pay of the civil servant is, I believe, around £23,000, and half of civil servants are paid £21,000 or less. In the pecking order, as it were, of the different sectors, average pay is highest in the wider public sector, private sector pay is next, and civil service pay is the lowest. So my concern for lower-paid civil servants is real and genuine, and it is based on a proper understanding of the concerns that exist.[12]

[7] http://services.parliament.uk/bills/2010-11/superannuation.html
[8] HC Deb, 7 September 2010, c211
[9] Ibid, c212
[10] Ibid, c210
[11] Ibid, c216
[12] Ibid, c213

The Bill did not include additional protection for the lower paid because "such matters should be negotiated."[13]

If agreement was not reached with the trade unions, the provisions in the Bill would come into effect. However, Mr Maude did not wish to see the legislation continue longer than was necessary:

> The second clause provides for the Bill's effects to be time-limited. I stress again that we have no desire to see this legislation continue any longer than is absolutely necessary. The inclusion of a sunset provision prevents the legislation from continuing ever onwards. Instead, if we wish to renew it, the Government will be obliged to return to the House to seek approval by an affirmative resolution.
>
> Alongside the provision for prolonging the effects of clause 1, there is also the option to bring forward the termination date. As I have already said, my intention is absolutely to resolve the issue by discussion and negotiation rather than by legislation, and I look forward to making the order that will repeal section 1 of the Act.[14]

He acknowledged that the Bill was "a bit of a blunt instrument":

> Just to be clear, we are seeking to negotiate a new scheme, which would effectively make the terms in the Bill redundant. I make no bones about this: the Bill is a bit of a blunt instrument. It does not seek to create an entire, comprehensive new scheme. It simply imposes a cap on the amounts payable under the current scheme, so that it will be possible for the scheme to operate in a way that is fair to the taxpayer and to workers in other sectors outside the civil service.[15]

However, he said, it was necessary because "one union cannot be allowed to prevent necessary reform of a scheme that is unsustainable and unaffordable."[16]

In response to concerns that the Bill would reduce accrued rights, he said the relevant rights were those in force at the time of redundancy:

> **Dr John Pugh (Southport) (LD):** The Minister has mentioned that the scheme was last revised in 1972, but did not that revision leave all previously accrued rights in place? Is he not doing something different now?
>
> **Mr Maude:** The extent to which rights are accrued is an issue to consider. We are talking not strictly about redundancy but about compensation for loss of office under a statutory scheme, and the relevant rights are those in force at the time when redundancy or loss of office happens. If the statutory redundancy scheme changes, the terms that govern the entitlement are those in place at the time when the redundancy happens. I understand my hon. Friend's point, but I do not believe it applies in this case.[17]

Shadow Minister for the Cabinet Office, Tessa Jowell, moved an amendment to the effect that the Bill should not be given a Second Reading:

> [...] this House, whilst affirming its belief that civil service compensation should be reformed, declines to give a Second Reading to the Superannuation Bill because it

[13] Ibid, c212
[14] Ibid,c218
[15] Ibid, c217
[16] Ibid, c215
[17] Ibid, c211

> provides inadequate protection for some of the lowest paid and longest serving public sector workers; believes that the reform proposals of February 2010 were fair, reasonable and non-age discriminatory, offering protection for the lowest paid workers whilst making substantial savings; and is strongly of the opinion that the publication of such a Bill should have been preceded by a full process of pre-legislative scrutiny of a draft Bill and in full consultation with Civil Service employees.[18]

She described the provisions in the Bill as "harsh, and harshest of all for some of the longest-serving, often low-paid civil servants."[19] She agreed that reform of the CSCS was needed:

> We fully recognise that, in the present climate, it provides over-generous and disproportionate benefits for some very highly paid people. I believe we are all agreed on the need for reform, which is why in February we set out changes to end what would be regarded by the wider public, and in any measure, as over-generous settlements.[20]

However, "it must be the right reform, delivered in the right way":

> It must be fair and workable, and in particular – here I echo the Minister's words – it must provide protection for the lowest paid. It must be underpinned by honest and open dialogue with the civil service unions representing those likely to be affected.[21]

Ms Jowell had concerns about the Equality Impact Assessment that had been provided:

> However, because compared with the existing situation these proposals in effect levy the greatest penalty on the longest-serving, and almost inevitably the oldest, civil servants, there is at least a prima facie case for considering whether they are age discriminatory. I draw no conclusions, but I say to the House that I consider that the equality impact assessment has not taken full account of the impact of the proposed measures across the work force. The Opposition consider the terms put forward to be both unfair and punitive.[22]

She argued that it "should be seen as a very unusual use of parliamentary procedure to ask Parliament to pass legislation that – as the Minister has made clear – it is hoped will not be implemented."[23]

Responding to issues raised in the debate, Parliamentary Under-Secretary of State, Nick Hurd, explained that powers to extend or revive clause 1 had been included in the Bill in order to maximise the Government's negotiating flexibility:

> I think it is impossible for us to be sure of every circumstance that could lead to a need to revive the Bill. The Government are therefore keen to maximise their negotiating flexibility. If we are unable to agree on a new scheme with the unions, the Minister for the Cabinet Office will have to renew the caps every six months by affirmative resolution.[24]

In response to a question from the Public Administration Select Committee chairman, Bernard Jenkin, about the risk of a legal challenge to the Government's approach, he said:

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[18] Ibid, c219
[19] Ibid, c219
[20] Ibid, c220
[21] Ibid, c220
[22] Ibid, c222
[23] Ibid, c223
[24] Ibid, c279 [Nick Hurd]

> He will be aware that trade union members and some hon. Members have placed on record the risk of a legal challenge, so he will not expect me to go into the details of the legal advice. I can confirm, however, that it is robust.[25]

The question of whether this was a Money Bill was a "matter for the Speaker to decide."[26]

The House voted to give the Bill its Second Reading by 326 votes to 244.[27] The Labour Party voted against, as did the Democratic Unionist Party, the Scottish National Party, Plaid Cymru, the Social Democratic and Labour Party and the Green Party. Four Liberal Democrat MPs voted against the Bill.[28] Two others, who had expressed particular concerns in the course of the debate, did not participate in the division.[29]

The Labour Party's proposed amendment was defeated by 329 votes to 240.[30]

The Programme Motion for the Bill was agreed to by 307 votes to 244.[31]

3 Public Bill Committee Stage

The Public Bill Committee used all four sittings allocated to it.[32] The Bill was not amended. Two Labour amendments were debated and then withdrawn. Another was negatived on division. The Committee divided on whether both clauses should form part of the Bill. Both votes were won by the Government.

The Committee had 18 members: 8 Conservative (including Parliamentary Under-Secretary of State, Nick Hurd), 7 Labour, 2 Liberal Democrat and 1 Democratic Unionist Party:

Chairmen: Mr Joe Benton, Mr Roger Gale

Members
Baldwin, Harriett *(West Worcestershire)* (Con)
Bray, Angie *(Ealing Central and Acton)* (Con)
Crabb, Stephen *(Preseli Pembrokeshire)* (Con)
Dodds, Mr Nigel *(Belfast North)* (DUP)
Dromey, Jack *(Birmingham, Erdington)* (Lab)
Gilbert, Stephen *(St Austell and Newquay)* (LD)
Goggins, Paul *(Wythenshawe and Sale East)* (Lab)
Graham, Richard *(Gloucester)* (Con)
Hemming, John *(Birmingham, Yardley)* (LD)
Hurd, Mr Nick *(Parliamentary Secretary, Cabinet Office)*
Jowell, Tessa *(Dulwich and West Norwood)* (Lab)
McClymont, Gregg *(Cumbernauld, Kilsyth and Kirkintilloch East)* (Lab)
McDonnell, John *(Hayes and Harlington)* (Lab)
Perry, Claire *(Devizes)* (Con)
Roy, Lindsay *(Glenrothes)* (Lab)
Spellar, Mr John *(Warley)* (Lab)

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[25] Ibid, c278; c 242-4 [Bernard Jenkin]
[26] Ibid, c280 [Nick Hurd]
[27] Ibid, c285-289
[28] Mike Hancock, Martin Horwood, Bob Russell, David Ward
[29] John Thurso [c250] and Dr John Pugh [c234]
[30] HC Deb, 7 September 2010, c281-5
[31] Ibid, c289-293
[32] PBC Deb, 14 September 2010, c1

Uppal, Paul *(Wolverhampton South West)* (Con)
Williamson, Gavin *(South Staffordshire)* (Con)

The Committee took oral evidence in two sittings on 14 September. Amendments were debated in two sittings on 16 September. The Committee received around 80 submissions of written evidence, many from individual civil servants who feared redundancy and were concerned at the reduced compensation that would be payable if the caps in the Bill applied. Information on the Public Bill Committee Stage on the Superannuation Bill is on the Parliament website.[33]

3.1 Oral evidence

Witnesses attending the first sitting were:

Dusty Amroliwala, Director, Civil Service Workforce, Cabinet Office
Peter Boreham, Director of Executive Reward, Hay Group
Keith Bradford, HR Director, Amec and member, CBI Employment Policy Committee
Charles Cotton, Member, Vice President's Reward Panel, Chartered Institute of Personel and Development
David Wreford, Principal of HR consultants, Mercer

Witnesses attending the second sitting were:

Ian Barton, Member, Public and Commercial Services Union
Karen Bell, Member, Prospect
Charles Cochrane, Secretary, Council of Civil Service Unions
Fiona Draper, Independent Pensions Consultant
Stephen Ennis, Members, Public and Commercial Services Union
Dai Hudd, Deputy General Secretary, Prospect
Geoff Lewtas, Director of Bargaining and Equality, Public and Commercial Services Union
Dave Penman, Head of Operations, First Division Association
Neil Walsh, Pensions Officer, Prospect

The two oral evidence sessions covered a range of issues, including the prospects for reaching a negotiated settlement, the impact on civil servants if no agreement was reached and differences between provision in the civil service, public and private sectors.

CSCS terms compared to private and public sectors

The Cabinet Office has estimated that enhanced early retirement packages under the current redundancy terms "can cost employers 6 years' pay."[34] Parliamentary Written Answers have said that "information on the number of civil servants who would currently get a package worth six years' salary if made redundant can only be provided at disproportionate cost."[35] Dusty Amroliwala of the Cabinet Office was asked if he could provide the Public Bill Committee with this information. He said there were two groups to consider – those who might be entitled and those who had actually received such an amount:

> There are two very clear classes or groups that we are considering here. There is the population—those staff who may be entitled, by virtue of their age and of their length of service, as matters of fact. That is not impossible to deduce, because we have that level of data. What is far more difficult, and frankly close to impossible to provide for

[33] http://services.parliament.uk/bills/2010-11/superannuation/committees/houseofcommonspublicbillcommitteeonthesuperannuationbill201011.html
[34] *Superannuation Bill* – Explanatory Notes, para 4
[35] HC Deb, 21 July 2010, c375W

> anybody with a degree of accuracy, are those who actually have applied over the course of a period of time and who might have been entitled to that level of compensation had their application been accepted and progressed.[36]

Committee Members probed witnesses on how civil service terms compared with those in the private and wider public sectors. Keith Bradford of Amec and the CBI Employment Policy Committee said:

> My understanding is that the NHS, which I did look at, is about a month's pay per year of service with a two-year cap, which would equate to bestish practice in the private sector—not way out of whack, but a top company. The current civil service scheme is way beyond that.[37]

Peter Boreham of Hay Group explained that private sector employers had tended to make their redundancy packages less generous in recent years:

> It would be pretty typical in the private sector to have a cap. Historically, it might have been as high as two years. Increasingly, it is coming down. For example, one of my clients—quite a large high-profile employer—last year brought down its terms to a cap of one year because the redundancy costs were just too high.[38]

He said the caps in the Bill would be at the "aggressive end" of public sector practice:

> Heroically simplified—a very rich position—one month per year of service is as good as, or better than, what you would see in other parts of the public service, for the most part. The one-year cap would be at the aggressive end of current practice, but as the rest of the public service cuts costs, it is inevitable that it will have to go through a similar process.[39]

In terms of comparing overall reward packages, Dai Hudd of Prospect said it was important to compare like with like:

> Part of the problem when making those comparisons relates to the proportion of the skilled work force that resides in the public sector, as opposed to the general economy, because the general economy, by and large, does not have the same level of people doing complex and highly skilled work as the public sector. An awful lot of that is a product of previous outsourcing and privatisation when, by and large, the low-hanging fruit—the service work—was outsourced, so you cannot make that comparison in a similar way. [40]

In any case, he argued that it was a "more complex issue than simply a broad, crude comparison." Civil service redundancy packages had evolved over decades and there were complex legal issues involved in disentangling them.[41] Prospect's analysis showed pay growth in the civil service over the last ten years to have lagged behind that in the private and public sectors.[42] The effect of the Bill would be to set civil service redundancy terms "far below the rest of the public sector as well":

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[36] PBC Deb, 14 September 2010,Q17
[37] Ibid, Q79
[38] Ibid Q54
[39] Ibid, Q51
[40] Ibid, Q95
[41] Ibid, Q95
[42] Ibid Q94-95 [Dai Hudd]

> Not only would median pay still be £21,000 per annum, which is below public sector—that is why it is important to distinguish them—but they would also have a redundancy package that was worse as well.[43]

Impact of the Bill

Charles Cochrane of the CCSU said the Bill would reduce the compensation payable to "anyone with more than 14 years' service."[44] Neil Walsh of Prospect argued that the Equality Impact Assessment had failed to draw out a number of important issues. One of these was age discrimination:

> You could say that there is age discrimination in the terms of the Bill itself, and you could also say that it fails to deal with the age discriminatory aspects of the existing terms, which the February agreement did deal with. So, for example, if a civil servant is made redundant at age 35 with five years' service, they will get compensation of five months' pay. If they had the same service, job, grade and experience but were 40 instead, their compensation would be double that.

The other was the impact on part-time workers:

> The existing terms as they stand allow for recognition of the impact on people who have recently gone part-time. For example, if a female civil servant has recently gone part-time in order to look after children, which is not uncommon, and is made redundant, the admittedly complicated formula of the current terms would allow for some of their full-time pay to be taken into account on the basis of recognising that they would eventually probably go back to full-time earning. They are not losing a part-time job; they are losing a part-time job that may revert to full-time hours once the child is of school age. This blunt Bill does not do anything about that. [45]

Three individual civil servants faced with possible redundancy gave evidence of the implications for them if the proposed caps were in force. Karen Bell, a member of Prospect working in the Central Office of Information, said that under the current scheme she would get £51,000 if made redundant. However:

> If the cap comes into play and I am compulsorily made redundant in November, which is the timetable at the moment, I will be worse off to the tune of just over £17,000. For me, that is the difference between giving me another six to eight months breathing space to find another job, which when I am in my 40s is perhaps not the easiest thing to do. If I am voluntarily made redundant, I will be worse off the tune of an £8,500 difference.[46]

Ian Barton, a PCS member working in the Government Office Network, said the 12-month cap would significantly reduce the amount of compensation he would get:

> Three times salary for me, currently under the existing terms, would amount to £138,000. Sure, some people will have a view on a civil servant attracting that sort of sum, but the new terms will mean that will go down by £92,000 to £46,000 before taxation. Irrespective of the sums involved, I am sure you would agree £92,000 is a huge amount to think about suddenly, in terms of planning for your future.
>
> After 27 years as a public servant, I would really like to stay in public service. It is what I enjoy doing. I have had options in the past to leave the civil service and move into the

[43] Ibid, Q108 [Neil Walsh]
[44] Ibid, Q94
[45] Ibid, Q118
[46] Ibid, Q106 and [Q111]

> banking or insurance fields, but I took a calculated decision at that time. Although I did not earn as much money as some of my friends at that particular point in my career, on balance, the overall employment package – taking into account pensions and the security of my job – is why I wanted to stay in the civil service.[...]
>
> I find myself now having to think about future plans with potential redundancy. We all know about the reduction in public sector job opportunities. With the hit that the public sector is going to take, it is going to be difficult to be redeployed. If the safety net of the compensation scheme is reduced in that way, the decisions that we all face in life – putting children through university, looking after elderly parents and all those things that I am sure are pertinent to you as well – will become real issues for me now.[47]

Stephen Ennis, also a PCS member working in the Government Office Network, said:

> I will be brief. I have been a civil servant for 18 years. I took a decision three or four years ago to purchase a rent-to-buy house. The simple equation is that if the redundancy package is changed, I will lose the house. That is the short and quick of it. My circumstances might be a little unique; I am not sure. My partner is registered disabled. I need the kind of employment that the civil service offers someone like me, and those terms and conditions. It is very unlikely that I would be able to secure a similar job. The Government office is disappearing, and there will not be anything else, particularly where I live, to employ me. I will lose the house and a job, basically. I cannot be any more open and honest than that.[48]

Negotiations for a successor scheme

Dusty Amroliwala of the Cabinet Office explained that the Government's aim was to reach an agreement on a successor scheme with the trade unions:

> It is conceivable that we will reach an agreement with all the trade unions in the current negotiations. At every step in the process, the Government have made it clear that they intend, if possible, to reach a negotiated outcome on the long-term sustainable scheme that we need in future. If such an agreement were to be reached, it would be open to Ministers to exercise the sunset provision in clause 2 and lay the new scheme before Parliament in the normal way, and it would have immediate effect.[49]

He said the Bill was "designed to cover circumstances where a deal has not been reached."[50]

Nick Hurd had said that Second Reading that the Bill was necessary to "break the deadlock" on negotiations. This existed, he said, because the current position enabled the unions "to veto any meaningful reform."[51]

Witnesses to the Public Bill Committee whether they thought the legislation had helped or hindered negotiations. Keith Bradford of Amec and a Member of the CBI Employment Committee, thought negotiations might be difficult in this context:

> In the private sector, an employer would take some time to negotiate the position that they wanted, perhaps with some compromises, of course, and might allow some phasing, although not over too long a period.

[47] Ibid, Q139
[48] Ibid, Q139
[49] Ibid Q2
[50] Ibid, Q3
[51] HC Deb, 7 September 2010, c278-9

> The Government's dilemma is that the previous Government, the previous employer, negotiated a deal that was blocked by law. I think that a tactic potentially is to unlock that to reopen negotiations, but you have to allow time for that to take place. I do not know how the tactics will play out were the legislation to go through but it would be pretty difficult to say to your staff, who might be on, say, a three-year cap, that the minute the legislation is enacted on 1 October or whenever – I am not sure of the date - negotiations will start from a position of reducing the cap to one year. That would be difficult, because it is a big cliff and probably does not allow sufficient room for negotiation.[52]

The civil service unions thought the Bill had "hindered" negotiations.[53] Witnesses with many years experience could not think of a precedent for legislation being used as a "tool" in negotiations in this way.[54] Dave Penman of the FDA said it had been open to the Government to "put on the table a set of terms that would have been more acceptable" to the unions.[55] He thought the provisions in the Bill could make it more difficult for the civil service to manage change:

> The organisation has reduced its work force by more than 80,000, relocated more than 20,000 jobs out of London in the past five years and done so without having to resort to more than about 80 compulsory redundancies through sophisticated management techniques, including the use of a range of voluntary redundancy arrangements. The civil service does not have one voluntary redundancy arrangement; it has a series of arrangements that can get used at different times and are more or less expensive depending on the circumstances. The civil service has been excellent in meeting that significant challenge and doing it in collaboration with the trade unions. It is a wonderful success story. As has been indicated, if we end up with a blunt instrument of the Bill that is going through, management will not have that sophisticated mechanism for managing that change.[56]

Dusty Amroliwala confirmed that the vast majority of civil servants whose roles had been lost due to reorganisation in the pipeline were nonetheless "gainfully employed" elsewhere in the civil service.[57]

The February 2010 proposals

The unions agreed that the February 2010 reforms would be a good basis for re-opening negotiations.[58] As they had been quashed as a result of a legal challenge by the PCS, its representative, Geoff Lewtas, was asked whether his members would now accept such a deal. While he said he could not accurately predict what his members would do in a given scenario, he thought the February 2010 scheme would have formed a "reasonable starting point" for the current negotiations.[59] However, it had not been considered to provide sufficient protection for the accrued rights for 50% of PCS members:

> When we looked at the terms of that deal, earlier this year, we found that it did give a degree of protection to some of the lower-paid—those who were on a £20,000 salary or less. From the civil service statistics, we know that that represented something like 40% of civil servants in total—the £20,000 threshold and that degree of protection. But

[52] PBC Deb, 14 September 2010, Q76
[53] Ibid, Q118 [Dai Hudd]; See also Q137, [Geoff Lewtas]
[54] Ibid, Q Q91 [Charles Cochrane] and [Dave Penman] ; Q17 [Dusty Amroliwala]
[55] Ibid Q101
[56] Ibid, Q112
[57] Ibid, Q5
[58] Ibid, Q96 [Charles Cochrane]; Q97 [Dai Hudd] and [Dave Penman]
[59] Ibid, Q124

> that left some of what we would regard as still being lower-paid people—certainly people on less than the average salary of civil servants; I am not saying that is my definition of low pay—plus a lot of other people who were on salaries in the £25,000 bracket. When we looked at those statistics, what that told us was that the deal on offer had probably given some reasonable protection for the lower-paid, in the £20,000 and below bracket, but that there was another 50% of our membership for whom the deal on offer did not represent an adequate or satisfactory degree of protection of accrued rights, in our judgment.[60]

Dai Hudd said any future proposals would need to reflect the balance arrived at in the February 2010 scheme:

> Without wishing to over-repeat the point, my union felt that the balance we struck with the last Labour Government did that. It put the balance in terms of accrued rights and a good scheme going forward, and it gave the Government significant savings. Frankly, no other scheme that does not reflect that balance stands a cat in hell's chance of getting off the ground. Otherwise, what we will face from all six unions is a legal battle that I can tell you now will be fierce, strongly fought on every corner and that will last a significant number of years. And if it does not come back to haunt this Government, it will come back to haunt a future Government.[61]

He thought his union could otherwise face legal action from its members:

> Our members will say that a judicial review has made a decision on accrued rights and accrued rights are not reflected in the agreement that I am putting to them. They will say, "Not only am I going to sue the Government, but I am going to sue my union, because you have not recognised that"[62]

Charles Cochrane explained that the CCSU had taken legal advice, on which it was seeking further clarification:

> But we certainly have a view that there is an argument to be made about accrued rights, which picks up the point that I think was developed in your session this morning about the *Human Rights Act 1998*, and the right to hold property, wages being deemed to be property, and about case law, which demonstrates that pensions are property. In the particular context of the civil service compensation scheme and its statutory basis, an argument flows through from that that provides protection. It is certainly an argument that is coherent. It is equally an argument that has never been fully tested in either the UK courts, other than during the judicial review process, and certainly has not been to Europe.[63]

3.2 Debate on clauses

Clause 1

Clause 1 caps the compensation payable under the CSCS at a maximum of 12 months' pensionable earnings for compulsory exits and 15 months' pensionable earnings for voluntary exits. The Government is consulting on long-term amendments to the scheme with the civil service unions and proposes that these will be made to dovetail with the expiry of clause 1.

[60] Ibid, Q127-2
[61] Ibid, Q119
[62] Ibid, Q119; see also, Q139 [Geoff Lewtas]
[63] Ibid, Q93

The Shadow Minister for the Cabinet Office, Tessa Jowell, tabled an amendment to clause 1 to cap CSCS payments at a higher level: i.e. to the greater of £60,000 (or, if less, three years' pay) and two years' pay. A further amendment would provide for a person aged at least 50 with a minimum of 5 years' service at the time the Bill came into force to be entitled to retire early on a full pension.[64] The existing caps in the Bill, she said, were "unfair and discriminate against those civil servants who have worked in the public service for many years." She described enhanced redundancy protection as "part of a compact that has built the commitment of such people to work in the civil service."[65]

She argued that reform should be along the lines proposed by the Labour Government in February 2010:

> Our argument, therefore, is that the February 2010 scheme should form the basis of the reform that we all agree is needed. It meets the tests against which reform should be judged, such as making a substantial contribution to tackling the deficit - £500 million was the accumulated saving under the 2010 package – while also ensuring that the reasonable expectations of civil service staff, and the lowest paid, in particular, are met. It was also important to address, as we sought to do, the age-discriminatory aspects of the earlier arrangements.[66]

While the ongoing negotiations might provide a fair settlement for the low-paid, that was not guaranteed:

> Tens of thousands of people may be made redundant over the next year and that may well be done under the terms of the Bill.[67]

Her amendment, she said, would "end the undesirable differential between compulsory and voluntary redundancies." Having more generous terms for voluntary exits, she argued, risked producing a perverse effect, whereby the civil service would "end up losing some of the more talented staff, who will be able to find positions elsewhere."[68]

In response, Parliamentary Under-Secretary of State, Nick Hurd, stressed that the context for the Bill was the "urgent need to reduce public expenditure":

> ...we are on the brink of an inevitable significant reduction in head count within the civil service. That is an extremely difficult and delicate process, which needs to be managed properly, fairly and, we submit, within a framework of certainty to both those given the difficult job of managing that process and those who have to live with some of the consequences of those decisions.[69]

He was struck by the cross-party consensus on the need for reform. The Bill was designed to "change the pace and dynamic of the negotiations which have dragged on."[70] He would not support the proposed amendments, which encouraged a return to the February 2010 proposals, for a number of reasons. The most important one was that "no deal was done on that basis, and no evidence suggests that a deal can be done on that basis." Furthermore, they did not meet the objective of bringing the CSCS more into line with private sector

[64] PBC Deb, 16 September 2010, c70
[65] Ibid, c71 and 74
[66] Ibid, c71
[67] Ibid, c75
[68] Ibid, c72
[69] Ibid, c85
[70] Ibid, c85

arrangements.[71] He also objected to the way in which it removed the incentives for voluntary departures:

> We would like managers to have more options that people can choose from, and we would like managers to have more flexibility and the ability to tailor packages for individuals in such difficult situations.[72]

He explained that there was a "serious negotiating process under way" to agree a successor scheme:

> The Bill sets out a de minimis position and, in parallel, there is a serious negotiating process under way. Those conducting the negotiations on behalf of the union are aware of the Government's position and where the Government are flexible in relation to the Bill. Those negotiators need no signal from the House in that respect; they are receiving those signals on an almost daily basis in the meetings that are taking place.[73]

In response to a question from John Hemming regarding the position of an individual who might receive compensation capped by the provisions in the Bill before a long-term settlement was agreed, he said that might be part of the negotiation process.[74]

Tessa Jowell recognised that the situation was "highly dynamic" as the negotiations were ongoing. She withdrew her amendments, with a view to returning to them on Report. The Committee divided on whether clause 1 should stand part of the Bill. It was ordered to do so by 10 votes to 7. [75]

Clause 2

Date the provisions come into force

Under Clause 2(2), the Act "comes into force on the day it is passed." Shadow Minister for the Cabinet Office, Paul Goggins, moved an amendment proposing a report to Parliament before this could happen. He said:

> Amendment 4 proposes that the Minister brings back to the House a report that sets out clearly what negotiations have been carried out and how the terms of those negotiations have progressed. Parliament will then consider and make some judgment about whether those negotiations were conducted seriously. If it decides that the negotiations have not worked, it will consider where the blame lies.[...]Under the terms of our amendment, there then has to be an affirmative resolution, which means that there is another procedure to be gone through, thus giving this Committee or another Committee of the House the opportunity to consider the quality of the negotiations.[76]

He argued that this would ensure greater transparency for the negotiations and greater accountability to Parliament.[77]

In response, Nick Hurd said the Government would oppose the amendment on the grounds that it would delay implementation, undermining the purpose of the Bill which was to "break a deadlock and make it more possible that a deal is done quickly."[78]

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[71] Ibid, c86
[72] Ibid, c87
[73] Ibid, c86
[74] Ibid, c86
[75] Ibid c90
[76] Ibid, c95
[77] Ibid, c95
[78] Ibid c101

For the record, he explained that an alteration of the CSCS by primary legislation did not require prior consultation:

> The *Superannuation Act 1972* requires that a scheme is made under section 1 of the Act, or that scheme is amended by way of another scheme, there must be consultation with affected employees or their representatives. In case the point is not clear, that requirement does not apply when a scheme is altered by primary legislation, rather than by amending the scheme.[79]

Paul Goggins said his amendment would not result in an indefinite delay, or give unions a veto on reform. It did not require agreement to be reached before a report was made. He objected that Parliament was being asked to sanction terms the Minister himself did not want to impose:

> I am sure that the Minister will acknowledge that Parliament is being asked to take an enormous step – to sanction a set of conditions for redundancy, which the Minister himself says he does not wish to impose on the work force. He wants something that will be better, particularly for the lower-paid.[80]

Nick Hurd said the Government was "prepared to consider presenting something to the House once the position is finalised but we are not prepared to hold up implementation of the Bill until the report is approved."[81] Paul Goggins welcomed this offer.[82] He withdrew the amendment but said he might look again at "ways in which we can make sure that Parliament retains its interest in this controversial measure."[83]

Powers to repeal, extend and revive clause 1

Clause 2 provides for clause 1 to expire after 12 months unless repealed, extended or revived using order-making powers. The Explanatory Notes say:

> Clause 2 provides for clause 1 to expire 12 months after it comes into force. It also grants order-making powers to the Minister to repeal clause 2 before it is due to expire, to extend the date on which clause 1 will expire, and to revive clause 1 after it has expired or been repealed. The powers to extend the expiry date and to revive clause 1 are subject to affirmative resolution procedures in the House of Commons. The power to repeal is subject to negative resolution procedures.[84]

Paul Goggins moved an amendment which would delete the powers to extend and revive, powers with which he said the Opposition had "serious difficulties":

> The first is the provision to extend the period beyond the 12-month sunset clause to a further date, during which time the conditions in clause 1 could be applied. That implies that the Minister is half expecting that the negotiations may not be concluded even by the earlier part of 2012, which is at variance with the messages that we hear from Ministers. I am keen to hear why the Minister needs the power to extend further the date of the sunset clause.
>
> More intriguingly, he wants to give himself a power to bring the legislation back if it is needed some time in the future. I am trying to understand how that process would

[79] Ibid, c100
[80] Ibid, c102
[81] Ibid, c103
[82] Ibid, c104
[83] Ibid, c105
[84] Superannuation Bill – Explanatory Notes, para 13

> work.[...] the Minister should explain why he needs that power of extension and the power to revive the conditions – the "sunrise power", as it has been called.[85]

Nick Hurd explained why the Government considered them to be necessary:

> The powers under clause 2 are necessary, particularly if we cannot reach a quick agreement. We must avoid finding ourselves back in the current situation. The House and the Committee have reached a common view that the current scheme is unaffordable and inappropriate. If, however, changes were quashed in ways that we cannot predict, and we were forced to revert to the current scheme, the ability to extend the sunset clause, which was the focus of the right hon Gentleman's enquiry, increases the incentive to reach an early agreement. That is the fundamental point, and that is what we want to deliver.[86]

He said it was not the Government's intention to use the provisions to worsen terms for civil servants in the future, after an agreement had been reached:

> **Jack Dromey**: [...] are there any circumstances in which, once an agreement is reached, the provisions of the Bill might be used on a second occasion to change for the worse the terms and conditions of employment for civil servants?
>
> **Mr Hurd**: No, that is certainly not the intention. The Bill only allows the Minister to improve the terms; there is no capacity to reduce them.[87]

Paul Goggins remained concerned that the Minister was giving himself unprecedented and far-reaching powers:

> Either the Minister really means it when he says that the settlement must be short and quick and negotiated soon, or he needs to be clear that the process could go on for a very long time, in which case he should be honest and tell the Committee that he wants the powers for as long as they are needed. To include a sunset clause that allows him to bring the date forward, or knock it back and bring the powers back, is to give himself unprecedented and far-reaching powers that are unwarranted.

He pushed his amendment to a vote, on which it was defeated by 8 votes to 10. Clause 2 was ordered to stand part of the Bill by 10 votes to 8.[88]

4 Update on negotiations

On 7 October, Minister for the Cabinet Office, Francis Maude, announced that it had concluded its negotiations with five of the six civil service unions (FDA, Prospect, Prison Officers' Association, GMB, Unite) on a new CSCS. The PCS had not signed up to the provisional agreement:

> There is of course one name missing from the list of unions, the PCS. I greatly appreciate the efforts of the five other unions whose constructive proposals have allowed us to reach these new terms. I very much regret that the PCS leadership has not been able to sign up to this provisional agreement at this time. [89]

The Minister described the new scheme as affordable, sustainable and fair:

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[85] Ibid, c105
[86] Ibid, c106
[87] Ibid, c107
[88] Ibid, c109-110
[89] Cabinet Office Press Release, 7 October 2010, 'Government concludes negotiations on Civil Service redundancy scheme'

> The new scheme would enable the Government to introduce reforms that are affordable, sustainable and fair for civil servants and taxpayers. The terms also offer significant extra protection for lower paid staff and for those with long service who are close to retirement. As part of the Government's commitment to fairness, they would also limit the maximum payments to the highest earners.

The new terms are:

- A standard tariff of one month's pay per year of service;
- A limit of 12 months pay for staff made compulsorily redundant;
- A limit of 21 months pay for those staff who depart under voluntary terms;
- Where staff are earning less than £23,000 a year (on a full time equivalent basis) and are made redundant their compensation can be based on a salary of £23,000. This figure will be set at 90% of the ONS figure for the Private Sector Median Full time Earnings in the Annual Survey of Hourly Earnings (ASHE) or £23,000 (which ever is higher). The current Private Sector Median is £24,970.
- Staff who have reached their minimum pension age may be able to have access to an unreduced pension if they depart on voluntary terms.
- Staff earning more than six times the Private Sector Median Earnings (currently £149,820) will have the calculation of their compensation based on that figure rather than their actual salary.
- A reform of the process for making staff redundant which will lead to a significant shortening of the time taken. In addition, all staff departing will now receive three months notice. Currently staff dismissed are entitled to at least six months notice. [90]

The Government intends that the new terms will supersede the current terms following the passing of the *Superannuation Bill*:

> The Government intends that these new terms will now supersede the current terms following the passing of the interim legislation (*Superannuation Bill*). The Bill is currently going through Parliament and we will work with the unions to implement the new terms as soon as possible. In terms of next steps, the union's executives are likely to seek the views of their members on the proposed new terms. For the Government, the next stage is the Report State and Third Reading of the Superannuation Bill in the House of Commons on 13 October.

It would table an amendment to the *Superannuation Bill*:

> This will remove the ability of a union to veto any changes to the compensation scheme. For the future, the Government will still need to consult on any changes, but they will not require the consent of the unions. For the purpose of the proposed new scheme, the negotiations leading to the agreement with the unions will constitute the required consultation. The amendment will also enhance the protection of accrued

[90] Cabinet Office Press Release, 7 October 2010, 'Government concludes negotiations on Civil Service redundancy scheme'

> pension rights by vesting the power to agree to any decrease to such rights in the hands of each individual member of staff.[91]

A Government amendment, new clause 1, was tabled on 7 October 2010.[92] This would amend section 2 of the *Superannuation Act 1972.* The scope and import of this section was central to the High Court judgment earlier this year (which found in favour of the PCS on its application for judicial review of the Labour Government's February 2010 scheme).[93] This is discussed in more detail in Library Research Paper 10/56 *Superannuation Bill* (section 4.4)

The PCS said it would demand further negotiations with the Minister to "setting out why the latest offer put forward is unacceptable":

> If the Cabinet Office refuses to meet or talks are unsuccessful, members will be balloted with a recommendation to reject the proposals, on the basis of the union's policy not to sign away members' accrued rights, the strength of the judicial review ruling and the possibility of further legal action. The NEC also agreed that the union will proceed with a challenge under the Human Rights Act to the current legislative attempts to cut redundancy pay.[94]

[91] Ibid
[92] http://www.publications.parliament.uk/pa/cm201011/cmbills/058/amend/pbc0581007a.203-204.html
[93] *The Queen (on the application of the Public and Commercial Services Union) and Minister for the Civil Service* [2010] EWHC 1027 ,10 May 2010
[94] PCS Press Release, 7 October 2010, 'Government seeks to slash redundancy to make massive job cuts'

Appendix 6

Assembly Research Papers

Research and Information Service
Bill Paper

23 March 2012

Colin Pidgeon

The Superannuation Bill

NIAR 105-12

This paper provides a general overview of existing redundancy pay – statutory, and in the private and wider public sector. It then concentrates on the provisions of the Superannuation Bill and raises some specific issues for Assembly Members' consideration.

Executive Summary

Following a general briefing on redundancy provisions in the private and wider public sector, the research presented in this paper looks at the Superannuation Act 2010 which applies in Great Britain (GB). Specifically it presents information relating to the legal challenges brought against the UK Government by the civil service unions in GB.

The primary purpose of the Northern Ireland Superannuation Bill is to make it more straightforward for the Northern Ireland Executive to introduce a new compensation scheme for Northern Ireland civil servants that is less generous than the current one. It does this by removing the existing requirement for government to secure trade union agreement to changes and replacing it with a duty to consult with a view to reaching agreement.

It should be noted then, that the Superannuation Bill does not itself change the current arrangements for the Civil Service Compensation Scheme (Northern Ireland) ("the NICSC Scheme"). Instead, the Bill alters the process for making changes to that Scheme. Consequently, information on the current and proposed Schemes may be relevant to the Assembly's consideration of the Bill itself as contextual background.

The underlying objective of amending the compensation scheme is to make it cheaper to the public purse to make civil servants either compulsorily or voluntarily redundant. The National Audit Office recently published a report which found that UK Government departments saved around 45% on redundancy costs in 2011 compared to what they would have paid out under the previous Home Civil Service scheme (which is the same as the current NICSC Scheme). This is a significant saving.

A number of issues are raised in the paper for Members' consideration. These are:

- **Assembly procedure**. A compensation scheme under the *Superannuation (Northern Ireland) Order 1972* can be made without any Assembly process to approve or annul it. This issue was raised in the Committee for Finance and Personnel during a pre-introductory briefing on the Bill. DFP was asked to consider if the *Superannuation (Northern Ireland) Order 1972* could be amended to change the Assembly procedure. Therefore, some issues relating to Assembly procedure are presented in this paper in section 2.2;
- **Parity**. The Northern Ireland Executive has introduced this Bill as a parity measure with Great Britain. There are two separate issues related to parity with GB. The first is in relation to systems and processes for administering the NICSC Scheme. The second is in relation to potential implications for the NI block grant – see section 4.1; and,
- **Trade union opposition**. It is apparent that unions representing civil servants are opposed to any revision to compensation arrangements which diminishes their value to their membership – see section 4.2.

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1. Introduction

The Northern Ireland Executive's Superannuation Bill ("the Bill") was introduced to the Assembly by the Minister of Finance and Personnel on 12 March 2012. The Bill does two things:

- Clause 1 removes the requirement under the *Superannuation (Northern Ireland) Order 1972* for the Department of Finance and Personnel (DFP) to secure the consent of trades unions before introducing detrimental changes to the NICSC Scheme; and,
- Clause 2 places a new duty on DFP to report to the Assembly on its attempts to reach agreement with trades unions in relation to detrimental changes to the NICSC Scheme. The proposed duty requires DFP to lay a report describing the consultation process undertaken.

The provisions of the Bill are considered in section 2 of the paper. Proposed changes to the NICSC Scheme are presented in section 3 of this paper. Section 4 presents some issues for the Assembly to consider. Before proceeding to those matters, Section 1 provides briefing on redundancy provisions outside the Northern Ireland Civil Service (NICS) as general background to the Bill.

1.1. Redundancy compensation in Northern Ireland

This section looks firstly at statutory redundancy pay, then at provisions in the private and wider public sector. This gives a backdrop to discussion of provisions in the civil service.

Statutory redundancy pay

Part XII of the *Employment Rights (Northern Ireland) Order 1996* (as amended) provides statutory rights for qualifying employees to minimum redundancy payments. Article 194 of that Order provides that these statutory rights **do not apply to civil servants.**[1]

Statutory redundancy pay is calculated as follows:

- for each year's service aged 41+.....1.5 weeks' pay;
- for each year's service aged 22 - 40 (inclusive).....1 week's pay; or,
- for each year's service aged below 22.....0.5 weeks' pay.[2]

The number of years' service that counts is capped at 20.

In addition there is a limit on the amount of a weekly gross pay which counts. Under the *Work and Families (Increase of Maximum Amount) Order (Northern Ireland) 2009* the limit is currently £380.[3]

Generally speaking, pay is the level of pay the employee was entitled to at the time notice of redundancy was given.[4] To qualify for any redundancy payment, an employee must have been continuously employed by the same employer for at least two years. It does not matter whether the employee is employed full or part time.[5]

1 http://www.legislation.gov.uk/nisi/1996/1919/article/194

2 http://www.legislation.gov.uk/nisi/1996/1919/article/197

3 http://www.legislation.gov.uk/nisr/2009/317/article/2/made

4 The Business Link website has an online tool for calculating the number of weeks' pay due. See http://www.businesslink.gov.uk/bdotg/action/layer?topicId=1079123792 (accessed 12 March 2012)

5 For more detail see House of Commons Library (2009) Standard Note SN/BT/960 'Redundancy Pay' available online at: http://www.parliament.uk/Templates/BriefingPapers/Pages/BPPdfDownload.aspx?bp-id=SN00960 (accessed 12 March 2012)

The private sector

In the public sector, employees' rights to redundancy pay are set out in schemes such as the NICSC Scheme. In the private sector, many employees' redundancy pay provisions are set out in their employment contracts.

The UK Government says that while private sector practice varies considerably, "the great majority provide between 6 to 12 months' salary."[6]

In October 2008 a survey of private firms by the Chartered Institute for Personnel Development (CIPD) found that:

> *Two in five (40%) do not offer redundancy pay above the statutory minimum. A third (35%) always offer it, with a further 14% offering it depending on seniority or length of service.*[7]

In addition to cash redundancy payments, some private sector employees may also qualify for early retirement packages. Research for the Department for Work and Pension (DWP) in 2007 found that:

> *Voluntary early retirement was provided for in around two-thirds of all schemes for which that particular arrangement was known, with [defined benefit] and [defined contribution] schemes again being similar in aggregate. Among those schemes that did make such provision, it was common for the pension to be actuarially reduced – only small proportions of schemes reduced the pension to a greater degree than the actuarial reduction or actually enhanced the pension, although again, a substantial proportion (around 30 per cent) could not provide an answer on this matter.*[8]

'Actuarial reduction' means that a pension in early payment is reduced reflect the fact that it is likely to be in payment for a longer period.

According to Incomes Data Services, an adverse funding situation for many pension schemes in recent years has led to general reduction in the generosity of early retirement terms.[9]

Wider public sector

Similar to civil servants, employees elsewhere in the public sector (such as the NHS, education or local government) have schemes which provide for compensation on redundancy.

The schemes for the NHS, local government and teachers have been reformed in recent years, partly to address provisions that might contravene age discrimination legislation. A common feature of the schemes post-reform is a cap of two years' pay applied to the maximum severance payment on redundancy. In general, individuals over minimum pension age (50 or 55) still have access to an early, unreduced, pension.[10]

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6 Cabinet Office (2011) 'Reform of the Civil Service Compensation Scheme – Q&A' available online at: http://www.civilservice.gov.uk/wp-content/uploads/2011/09/Compensation-QA_tcm6-36784.doc (accessed 12 March 2012) (see page 2)

7 CIPD (2008) 'Labour Market Outlook, focus: redundancy' available online at: http://www.cipd.co.uk/NR/rdonlyres/0268A0C4-D7E2-4F63-AE2A-73B2E5D927CD/0/labour_market_outlook_autumn_2008.pdf (accessed 12 March 2012) (see page 3)

8 Department for Work and Pensions (2007) 'Employers' Pension Provision Survey 2007' available online at: http://statistics.dwp.gov.uk/asd/asd5/rports2007-2008/rrep545.pdf (accessed 12 March 2012) (see page 98)

9 House of Commons Library (2010) 10/56 'Superannuation Bill' available online at: http://www.parliament.uk/Templates/BriefingPapers/Pages/BPPdfDownload.aspx?bp-id=RP10-56 (accessed 12 March 2012) (see page 4)

10 House of Commons Library (2010) 10/56 'Superannuation Bill' available online at: http://www.parliament.uk/Templates/BriefingPapers/Pages/BPPdfDownload.aspx?bp-id=RP10-56 (accessed 12 March 2012) (see page 5)

1.2. The Superannuation Act 2010 in GB

The Superannuation Bill now before the Assembly mirrors the *Superannuation Act 2010* passed in Westminster.[11] This section looks at the policy rationale for parity, and presents detail of the challenges to the UK Government's changes to Home Civil Servants' rights in respect of redundancy.

The basis for keeping parity

The NICSC Scheme traditionally operates on a parity basis with the equivalent scheme for the Home Civil Service in Great Britain. This means that, while the NICS is a separate organisation from the Home Civil Service, the terms for redundancy mirror those for civil servants working in UK departments. In a briefing provided to the Committee for Finance and Personnel (CFP), DFP stated that:

> *Although public service pension policy is a transferred matter it has been a matter of practice for many decades that the pension scheme for civil servants in Northern Ireland has been virtually identical to its equivalent in GB. […] Failure to maintain parity in this instance would result in civil servants who are made redundant continuing to receive higher compensation payments than GB civil servants who leave in similar circumstances which may also exert additional pressures on public expenditure in Northern Ireland.*[12]

In other words, if both the law and the NICSC Scheme remain unchanged, NICS staff (and other Scheme members) would be in a better protected position than their counterparts in GB. In the event of redundancies, this would result in higher costs to the public purse in Northern Ireland than in a comparable situation in the rest of the UK.

Aspects of the parity arguments are considered in more depth in section 4 of this paper.

1.3. The Superannuation legislation in Westminster

Reform of the compensation scheme for the Home Civil Service began under the previous UK Labour government for three reasons:

- to minimise the potential cost to the public purse;
- to simplify the system; and,
- to comply with age discrimination legislation.[13]

The current UK Government continued to pursue these reforms to ensure that any future redundancy payments were affordable in the current economic climate, and in the context of deficit reduction. It therefore amended the compensation scheme in GB to reduce the levels of compensation payable on redundancy.

Details of the legal challenges to those changes and subsequent legislation is below. This background helps to explain why the *Superannuation Act 2010* was brought in.

Legal challenge

The Public and Commercial Services (PCS) Union represents the majority of civil servants in the Home Civil Service. In May 2010, it applied for judicial review of the decision to change the compensation scheme in GB without the agreement of the trades unions.

The compensation scheme in GB is made under the *Superannuation Act 1972*. Section 2(3) of that Act (as it was in spring 2010) stated that detrimental changes to the scheme could

11 http://www.legislation.gov.uk/ukpga/2010/37/introduction/enacted

12 Letter from DFP to Committee for Finance and Personnel, 27 June 2011

13 Letter from DFP to Committee for Finance and Personnel, 27 June 2011

not be introduced unless representatives of persons affected (i.e. trades unions) **had agreed to it.**

The courts upheld the PCS case and stated that the amendments to the compensation scheme should be quashed. Mr Justice Sales rejected the argument made by the UK Cabinet Office that the requirement for agreement **only** applied to the pension scheme and not the compensation scheme. In his judgment he said:

> *…section 2(3) of the 1972 Act as amended is **properly to be interpreted as conferring protection in relation to all entitlements** in the [pension scheme] and [the compensation scheme] referable to length of service and contributions paid, whether they constitute legal entitlements in the full sense or entitlements as a matter of established and declared administrative practice as set out in any relevant scheme made under section 1 of the 1972 Act.[14] [emphasis added]*

Because the NICSC Scheme to all intents and purposes operates under the same legal provisions (albeit in the form of separate Northern Ireland legislation) it is reasonable to assume that the courts in Northern Ireland would take a similar view.

The Superannuation Act 2010

The UK Government responded to this judgment by introducing a Bill to amend the *Superannuation Act 1972*. The *Superannuation Act 2010* introduced new provisions which removed the requirement for trade union agreement to compensation scheme changes. Instead, the legislation now requires the government to *"consult with a view to reaching agreement with the persons consulted."*[15]

Further legal challenge

Subsequent to the initial legal challenge discussed above, the PCS made a further case to court that the new compensation scheme in GB breached Article 1 of Protocol 1 to the *European Convention of Human Rights* (i.e. the right to enjoyment of possessions). The PCS argued that the rights to redundancy pay in the compensation scheme amount to possessions, and therefore the UK Government was in breach by interfering with those rights.

The courts rejected this claim in summer 2011. Mr Justice McCombe said in his judgment that *"nothing in the [Superannuation Act 2010] interferes with or removes accrued pension rights*."[16] This meant that the only 'possession' which could be interfered with was in relation to retained rights to redundancy compensation.

In relation to that point he observed that:

> *Parliament expected significant savings in compensation payments to be achieved, but left the Minister the possibility of making a scheme agreed with the unions.*[17]

14 The text of the judgment is available online at: http://www.bailii.org/cgi-bin/markup.cgi?doc=/ew/cases/EWHC/Admin/2010/1027.html&query=2010+and+EWHC+and+1027+and+(Admin)&method=boolean (accessed 13 March 2012)(see paragraph 56)

15 see http://www.legislation.gov.uk/ukpga/2010/37/section/2/enacted Section 2(2) of the Superannuation Act 2010 inserted a new section 3D into the 1972 Act.

16 The text of the judgment is available online at: http://www.bailii.org/cgi-bin/markup.cgi?doc=/ew/cases/EWHC/Admin/2011/2041.html&query=EWHC+and+2041+and+(Admin)&method=boolean (accessed 13 March 2012)(see paragraph 67)

17 The text of the judgment is available online at: http://www.bailii.org/cgi-bin/markup.cgi?doc=/ew/cases/EWHC/Admin/2011/2041.html&query=EWHC+and+2041+and+(Admin)&method=boolean (accessed 13 March 2012)(see paragraph 70)

He further noted that, by questioning the motivation behind the will of Parliament in respect of measures to contribute to deficit reduction, the court was asked to go *"behind a government decision in the macro-political/macro-economic sphere",*[18] which he was not inclined to do.

In conclusion, the court dismissed the unions' claim.

18 The text of the judgment is available online at: http://www.bailii.org/cgi-bin/markup.cgi?doc=/ew/cases/EWHC/Admin/2011/2041.html&query=EWHC+and+2041+and+(Admin)&method=boolean (accessed 13 March 2012)(see paragraph 71)

2. The Superannuation Bill

Subsequent to the legal judgment presented above, the Northern Ireland Executive agreed to the preparation of the Bill which was introduced to the Assembly on 12 March 2012. The Bill replicates for Northern Ireland the provisions of the *Superannuation Act 2010*.

2.1. Analysis of the Bill's clauses

The Executive has agreed to pursue a policy of parity with GB. There are two substantive clauses in the Bill which make amendments to the *Superannuation (Northern Ireland) Order 1972*. The clauses are explained in the Explanatory and Financial Memorandum to the Bill. This paper does not repeat those explanations: this section instead supplements them with additional relevant information.

Clause 1

Clause 1 removes the requirement under the Superannuation (Northern Ireland) Order 1972 for DFP to secure the consent of trades unions before introducing detrimental changes to the NICSC Scheme.

The purpose of this clause is removal of the current trade union veto over detrimental changes with a view to doing just that. In evidence to the Committee for Finance and Personnel (CFP) on 7 March 2012, an official noted that this will enable DFP:

> *…to align the amount of compensation payable to Northern Ireland Civil Service (NICS) staff and other members of the scheme who are covered by the NICS pension arrangements with that payable in Great Britain.*[19]

The new NICSC Scheme that will be introduced following passage of the Bill will reduce the amount of compensation available following either compulsory or voluntary redundancy. In evidence an official explained the difference:

> *…staff leaving on voluntary redundancy will receive a maximum of 21 months' salary, while those leaving on compulsory redundancy will receive a maximum of 12 months' salary. Pensions are a complex issue, and, under current terms, people generally — I emphasise the word "generally" — receive up to three years' pay. Broadly speaking, that is the difference.*[20]

DFP provided CFP with a paper in June 2011 which compared the proposed terms for the NICSC Scheme with the current terms. A number of points are drawn to the attention of Members in section 3 of this paper.

Clause 2

Clause 2 places a new duty on DFP to report to the Assembly on its attempts to reach agreement with trades unions in relation to detrimental changes to the NICSC Scheme. The proposed duty requires DFP to lay a report describing the consultation process undertaken.

19 Official Report, Committee for Finance and Personnel, 7 March 2012, available online at: http://www.niassembly.gov.uk/Assembly-Business/Official-Report/Meetings-of-Assembly-Committees-Minutes-of-Evidence/Superannuation-Bill-Pre-introductory-Briefing/

20 Official Report, Committee for Finance and Personnel, 7 March 2012, available online at: http://www.niassembly.gov.uk/Assembly-Business/Official-Report/Meetings-of-Assembly-Committees-Minutes-of-Evidence/Superannuation-Bill-Pre-introductory-Briefing/

In evidence to CFP, an official explained that:

> *…before making any amendment that would reduce the amount of compensation benefit, the Department of Finance and Personnel will have a duty to consult the unions with a view to reaching agreement. If an amendment scheme reduced the amount of compensation payable, the Department of Finance and Personnel must have laid before the Assembly a formal report that will provide information about the consultation that took place for that purpose; the steps that were taken in connection with that consultation with a view to reaching agreement on the issue; and whether such agreement has been reached.*[21]

The official also outlined the consultation that has taken place on the Bill:

> *…engagement with the unions will continue through the pension forum. The pension forum has been regularly updated. We had a meeting on 12 December, and, on 1 March this year, it was issued with an update letter informing it that the Executive had agreed on 23 February to introduce the Bill in the Assembly as a first step in the legislative process […] Following Royal Assent and before making the amendment and the changes [to the NICSC Scheme], we will continue to consult the unions. Employer pension notices will be issued to all staff and members of the scheme to inform them of the date of the amendment when it becomes law and on the changes to the Civil Service compensation scheme in Northern Ireland.*[22]

The key difference that will arise from the Bill is that, at present, DFP must reach agreement with the trades unions. The amended legislation will allow the **imposition** of a new NICSC Scheme. The clause 2 duty is to ensure that the unions are consulted and – even if they do not agree with the changes – the Assembly must be kept informed of that process.

During an evidence session with CFP, officials were asked about Assembly control over new the new NICSC Scheme. This issue is picked up in the next section.

2.2. Assembly control

This section presents considerations relating to Assembly control over a future NICSC Scheme made under the arrangements proposed in the Bill.

Article 4(8) of the Superannuation (Northern Ireland) Order 1972 provides that:

> *(8) Before a scheme made under Article 3, being the principal civil service pension scheme or a scheme amending or revoking that scheme, comes into operation the Ministry shall lay a copy of the scheme before Parliament.*[23]

Unlike most Statutory Rules, therefore, there is no requirement either for a process of affirmative resolution (whereby the Assembly must vote to bring the measure into effect) or negative resolution (whereby the measure comes into effect unless the Assembly votes to annul it) before DFP can change the NICSC Scheme.

During a pre-introductory evidence session, this issue was raised with officials. The Deputy Chairperson asked:

Paragraph 6 of your paper of 15 June pointed out that DFP can make amendments to the scheme that are not subject to parliamentary procedure in the Assembly through

21 Official Report, Committee for Finance and Personnel, 7 March 2012, available online at: http://www.niassembly.gov.uk/Assembly-Business/Official-Report/Meetings-of-Assembly-Committees-Minutes-of-Evidence/Superannuation-Bill-Pre-introductory-Briefing/

22 Official Report, Committee for Finance and Personnel, 7 March 2012, available online at: http://www.niassembly.gov.uk/Assembly-Business/Official-Report/Meetings-of-Assembly-Committees-Minutes-of-Evidence/Superannuation-Bill-Pre-introductory-Briefing/

23 http://www.legislation.gov.uk/nisi/1972/1073/article/4

the usual negative or affirmative resolutions. Why is that, and could that be changed in the Bill to provide the safeguard of the Assembly's having some control over the scheme amendments?[24]

A DFP official responded that this issue had not to date been considered either by officials or by the Minister.

How is the Assembly procedure chosen?

The forms of Assembly control that may apply to subordinate legislation are set out in the Table 1 below.

Table 1: Varieties of Assembly control[25]

Class	Procedure
	Affirmative resolution procedures
(a)	The rule is laid in draft and cannot be made unless approved by the Assembly
(b)	The rule is laid after making but cannot come into operation unless and until approved by the Assembly
(c)	The rule is laid after making but shall cease to have effect unless approved by the Assembly within a specified time, referred to as the confirmatory resolution procedure
	Negative resolution procedures
(a)	The rule is laid in draft to take effect at the end of a specified period if not negatived by resolution of the Assembly within that time
(b)	The rule is laid after making and is annulled if a resolution of annulment is passed within the statutory period. The effect of such a resolution is that the rule is void and ceases to have effect
	Other procedures
(a)	The rule is required to be laid before the Assembly but there is no provision for further proceedings
(b)	The rule is not required to be laid

A legal text discussing the process for determining the Parliamentary procedure applicable to

secondary legislation in Westminster makes clear that the decision is one of policy:

The choice of procedure to be adopted lies with the government […] the affirmative resolution procedure is rarely adopted by government; the negative resolution procedure requires Members of Parliament to be vigilant and astute if they (usually the Opposition) are to be aware that a particular instrument has been laid and are able to move a prayer for annulment within the 40 day period.[26] [emphasis added]

Whilst this extract does not specifically address the mechanism when no procedure is required, it does make clear that it is within the discretion of the government to decide which system is most appropriate.

24 Official Report, Committee for Finance and Personnel, 7 March 2012, available online at: http://www.niassembly.gov.uk/Assembly-Business/Official-Report/Meetings-of-Assembly-Committees-Minutes-of-Evidence/Superannuation-Bill-Pre-introductory-Briefing/

25 Source: Handbook on Subordinate Legislation, February 2012

26 Barnett, H (2009) 'Constitutional and administrative law' 7 edition Routledge, Cavendish Abingdon, pages 376 to 377

The National Assembly for Wales' Constitutional and Legislative Affairs Committee has recently been trying to establish whether the Welsh Assembly Government uses any guidelines to help decide which procedure to use. The Welsh Assembly Government provided the committee with a copy of the guidelines its legislative counsel employ. These state:

There are some factors that may, to a greater or lesser extent depending on the context:

(a) tend to suggest the application of the "draft affirmative" procedure; or

(b) require particular justification if a procedure other than "draft affirmative" procedure is applied.

The factors referred to above are:

1) powers that enable provision to be made that may substantially affect provisions of Acts of Parliament, Assembly Measures or Acts of the Assembly;

2) powers, the main purpose of which is, to enable the Welsh Ministers, First Minister or Counsel General to confer further significant powers on themselves;

3) powers to apply in Wales provisions of, for example, Acts of Parliament that in England, Scotland or Northern Ireland are contained in the Act itself (whether with or without modifications);

4) powers to impose or increase taxation or other significant financial burdens on the public;

5) provision involving substantial government expenditure;

6) powers to create unusual criminal provisions or unusual civil penalties;

7) powers to confer unusual powers of entry, examination or inspection, or provide for collection of information under powers of compulsion;

8) powers that impose onerous duties on the public (e.g. a requirement to lodge sums by way of security, or very short time limits to comply with an obligation).

9) powers involving considerations of special importance not falling under the heads above (e.g. where only the purpose is fixed by the enabling Act and the principal substance of the legislative scheme will be set out in subordinate legislation made in exercise of the power).

Factors that may reasonably tend to suggest the application of the "negative" procedure include, in particular:

1) where the subject-matter of the subordinate legislation is relatively minor detail in an overall legislative scheme or is technical;

2) where it may be appropriate to update the subject-matter of the subordinate legislation on a regular basis;

3) where it may be appropriate to legislate swiftly (e.g. to avoid infraction proceedings or for the protection of human or animal health or of the environment);

4) where the discretion of the Welsh Government over the content of the subordinate legislation is limited (e.g. legislation that gives effect to some provisions of EU law);

5) where it would be appropriate to combine provision to be made under the power with provision that can be made under another power where the latter may be subject to negative procedure.[27]

In Northern Ireland, the First Legislative Counsel has confirmed that – like in Westminster – the appropriateness of a particular form of Assembly control is a matter of policy:

…like everything else that goes into a Bill, ***the level of Assembly control is a policy matter*** *which is decided by the Department in charge of the Bill. The draftsman may well advise based on criteria similar to those [mentioned in relation to Wales], but there are* ***no hard and fast rules****. For example while 99.9% of commencement orders are subject to no procedure at all we do very occasionally have one that is subject to affirmative resolution where the subject matter is extremely contentious. Very often the question of which procedure to apply depends on operational or political considerations on which only the Department can take a view.*[28] *[emphasis added]*

The Examiner of Statutory Rules has noted that the NICSC Scheme is not technically implemented by statutory rule.[29] Nevertheless, it would appear to be theoretically open to DFP to amend the *Superannuation (Northern Ireland) Order 1972* to allow for an Assembly control process. As noted above, CFP requested that DFP consider the feasibility of such an approach.

27 Constitutional and Legislative Affairs Committee 'Public Documents Pack' 5 March 2012 available online at: http://www.senedd.assemblywales.org/documents/g713/Public%20reports%20pack,%20Monday,%2005-Mar-2012%2014.30,%20Constitutional%20and%20Legislative%20Affairs%20Committee.pdf?T=10 (accessed 20 March 2012) (see pages 364-5)

28 Source: communication from First Legislative Counsel

29 Source: communication from ESR

3. The current and proposed NICS compensation schemes

DFP provided comparative tables to CFP in relation to the proposed NICSC Scheme. This is attached as Appendix 1 due to the complex nature of the information. Appendix 2 gives worked examples, also provided by DFP, of what the changes would mean to employees of different ages and in different circumstances. Some particular points of potential interest to Members are made here.

The current NICSC Scheme has complicated benefits depending on the age of the employee, the length service and whether the employee was in post on 1 April 1987. In some circumstances, compensation for compulsory redundancy can be up to 3 years' pay. In other circumstances (where an employee is aged between 40 and 50 and qualifying for the pre-1987 package), the cost can exceed 6 years' pay.

The NICSC Scheme also provides for early retirements under both compulsory and voluntary terms. In certain circumstances, pensionable service can be enhanced by up to 6 2/3 years **plus** a lump sum compensation payment.

The generosity of the current terms **in GB** attracted some media attention. For example, an article in the *Daily Mail* reported:

> *An estimated 1,700 civil servants whose jobs have been abolished are still on the public payroll because their 'gold-plated' redundancy deals make them too costly to sack.*
>
> *It is thought they are pocketing £50million a year despite having no job to do. Instead they are waiting in 'talent pools' to be redeployed.*
>
> *A Government source last night said the 'ludicrous' situation underlined the urgent need for a crackdown on lavish civil service redundancy deals.*[30]

3.1. Changes to the NICS compensation scheme

As noted above, the comparative table produced by DFP in relation to the proposed NICSC Scheme is complex and is attached as Appendix 1. Appendix 2 gives worked examples, also provided by DFP, of what the changes would mean to employees of different ages and in different circumstances. As before, some particular points of potential interest to Members are made below.

Compulsory redundancy

- the employer **must** offer voluntary redundancy terms before moving to offer compulsory terms;
- employees earning **less than £23,000** per annum will have any compensation payment calculated on that amount. This provides a measure of protection for lower-paid workers;
- employees' earnings will be **capped at £149,820** for the purposes of any compensation payment. This means that the very highest earners would have their current rights more significantly curtailed;
- one month's pay for each year of service with an overall limit of **12 months**' (one year's) pay for those **under** pension age; and,

30 Daily Mail '1,700 civil servants paid to do nothing because redundancy deals are too costly' , 6 July 2010, available online at: http://www.dailymail.co.uk/news/article-1292348/1-700-civil-servants-paid-redundancy-deals-costly.html (accessed 14 March 2012)

- for those over pension age, the overall limit will be at **six months' pay** with immediate access to pension.

Voluntary redundancy

- one month's pay for each year of service with an overall limit of **21 months'** (one year's) pay for those under pension age;
- for those **over** pension age, the overall limit will be at **six months'** pay with immediate access to pension;
- employees earning **less than £23,000** per annum will have any compensation payment calculated on that amount. This provides a measure of protection for lower-paid workers;
- employees' earnings will be **capped at £149,820** for the purposes of any compensation payment. This means that the very highest earners would have their current rights more significantly curtailed;

NOTE: The higher and lower deemed earnings are for the purpose of calculating compensation payments only. They will not apply to the calculation of pension benefits.

3.2. Reduced redundancy costs in GB

The National Audit Office (NAO) recently published a report *Managing early departures in central government*. It found that UK Government departments had made considerable savings in 2011 as a result of the new compensation scheme, compared to what it would have cost to reduce staff numbers under the old scheme:

> *Departments paid an estimated total of £600 million gross to release the 17,800 employees who left early under the revised Scheme during 2011. These costs are **around 45 per cent lower than they would have been under the previous Scheme.** However, there were no estimates of the administration or other costs of managing the departures.[31] [emphasis added]*

3.3. Reduced potential redundancy costs under the proposed NICSC Scheme

In the indicative comparative figures attached as Appendix 2, DFP has stated that:

> *For comparison purposes if a Department had a voluntary redundancy exercise which included 100 members of staff aged approximately age 55 and with 30 years [service] the cost under the current scheme […] would be over £12 million. However, under the proposed revised scheme the scheme cost would be £7 million with a saving of approximately £5 million.[32]*

An indicative saving of £5m under proposed terms compared with £12m under current terms would be a reduction in cost of over 40%. This is of a similar order to the savings reported by the NAO in relation to GB which gives some assurance that estimate is realistic.

It is important to note that there is currently no public plan to introduce a redundancy programme in Northern Ireland. Also, DFP centrally manages human resource for the NICS which means **the circumstances are not directly comparable to GB.[33]** UK Government departments operate more independently of each other in relation to staffing. The NAO report noted that:

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31 NAO (2012) 'Managing early departures in central government – Executive Summary' available online at: http://www.nao.org.uk//idoc.ashx?docId=22a81453-1a7a-47f4-9d3e-800e2fb8093c&version=-1 (accesses 20 March 2012) (see page 6)

32 Source: personal communication with DFP official

33 Source: personal communication with DFP official

> *Coordination from the centre of government on early departures was minimal, creating duplication of work in HR departments. Moreover, the arrangements for redeploying staff from one department or agency to another are inconsistent, and cannot ensure best use of skills.*[34]

This could lead to one department introducing redundancies at the same time as another is recruiting staff. In contrast, the NICS, **does** have arrangements for redeploying staff between departments. For example, a number of Planning Service staff were redeployed to Land and Property Services in 2010.[35] It is arguable that this flexibility mitigates against any perceived risk to civil servants' job security.

34 NAO (2012) 'Managing early departures in central government – Executive Summary' available online at: http://www.nao.org.uk//idoc.ashx?docId=22a81453-1a7a-47f4-9d3e-800e2fb8093c&version=-1 (accesses 20 March 2012) (see page 9)

35 DFP press release at: http://www.dfpni.gov.uk/lps/index/news_archive_section/lps_welcomes_planning_staff_-_19_august_2010.htm (accessed 22 March 2012)

4. Issues for consideration

4.1. Parity

The legislation under which the NICSC Scheme is operated (i.e. *Superannuation (Northern Ireland) Order 1972)* is framed in very similar terms to the Westminster legislation. Similarly, the amendments proposed in the Bill are the same as those introduced in GB through the *Superannuation Act 2010.*

It was noted above that the Northern Ireland Executive has opted to continue to pursue a policy of parity in relation to the NICSC Scheme. This means that the NICSC Scheme will continue to mirror the compensation scheme that operates in the Home Civil Service in GB.

DFP has highlighted in evidence to CFP that by breaking parity there would be a financial cost to the Executive. This cost falls into two distinct elements:

- systems, structures and processes; and,
- implications for the Northern Ireland block grant.

Each of these elements is considered below.

Systems, structures and processes

DFP explained this element in a briefing provided to CFP:

> *Parity with GB has provided a number of benefits over the decades, including a central forum for negotiations with the Trades Unions and consistency of approach across the public sector. It has* ***enabled the costs of administration to be controlled*** *as parity provides for a source of primary legislation and also secondary legislation from GB in the form of Scheme Amendments; associated communication booklets, leaflets etc for staff and employers notices; legal advice and policy guidance; and common IT systems maintained at minimal cost. A break with parity would result in the above benefits being lost.*[36] *[emphasis added]*

The point in relation to policy guidance was explained further in evidence to CFP on 7 March:

> *We have detailed scheme rules, and it has been extremely helpful to us in the past and has served us well to have other sources of expertise to go to. Our scheme membership is quite small, and others who have more experience in dealing with issues and what happens when cases go to the Pensions Ombudsman, for example, can share the experience of other precedents and how that has been handled.*

Not only, therefore, would there be a cost in maintaining systems which were different from those used in GB; there **could** also be a cost in securing policy advice and guidance on implementation of a scheme which the much larger Home Civil Service was no longer operating. Among other possibilities, this might involve additional training, recruitment of additional staff, or commissioning external advice.

Implications for the Northern Ireland block grant – additional public expenditure pressure?

Public service pensions policy is devolved to Northern Ireland. Any redundancy scheme (voluntary or compulsory) under either the current or proposed NICSC Scheme would be funded from the resources under the control of the Northern Ireland Executive.

36 Letter from DFP to Committee for Finance and Personnel, 27 June 2011

If there were a redundancy scheme for civil servants introduced in England, Northern Ireland would receive 'Barnett consequentials'[37] on any **additional** funding made available for it by the UK Government. This means that Northern Ireland would get a **population-based share of any addition to a Whitehall department's budget** over-and-above what it has already been allocated under Spending Review 2010. If, however, a Whitehall department funded a redundancy scheme from **within its existing budget**, Northern Ireland would not receive a Barnett Consequential.

Barnett Consequentials are unhypothecated. In other words, the money that the Northern Ireland Executive receives is not earmarked for any specific purpose – it would go into the general 'pot' of resources – and it is for the Executive to decide how to use it. So, in the event that the Executive received Barnett Consequential as a result of an increase in funding because a redundancy scheme in England, it would not have to apply that additional funding to the NICSC Scheme. It could be used for any purpose.

A hypothetical example of a Barnett Consequential is provided in Box 1.

Box 1: worked example of Barnett consequential

NI population as proportion of England (ONS mid-year estimate 2010) = 3.44%

Comparability = 100%

Additional allocation made to Whitehall department for redundancy scheme = £100m

£100m x 3.44% = £3.44m. Less VAT abatement at 2.5% = £3.35m

In the example in Box 1, the Northern Ireland Executive would receive £3.35m as a consequence of the spending decision in England. So it is possible to argue that any scheme in Northern Ireland that cost **more** than £3.35m would be **unfunded** by the amount of the difference.

Therefore, if an NICSC Scheme cost £5m, for example, there would be a public expenditure pressure for the difference: £3.35m - £5m = **-£1.65m**

It is important to note, however, that this apparent gap in funding only appears **if a Whitehall department and the Northern Ireland Executive both decide to initiate a programme of redundancy.**

But in different circumstances, the funding pressure would not arise. If the Whitehall department received an additional allocation for a scheme, and the Northern Ireland Executive did not instigate a programme then the **full** consequential (i.e. £3.35m in the example) would be available to fund something else.

These situations could arise **irrespective** of the retention of (or amendment to) the NICSC Scheme. Presumably the point made by DFP is that additional expenditure pressure is **more likely** to arise if Northern Ireland retains a more generous scheme than exists in GB.

It should be noted that this indicative expenditure pressure would be as a consequence purely of meeting the costs of compensation payments. It does not address the potential additional costs in relation to systems and processes discussed above. DFP has been asked by CFP to provide separate estimates of those costs.

37 For further information see RaISe (2011) 'Barnett Consequentials' available online at: http://www.niassembly.gov.uk/Assembly-Business/Research-and-Information-Service-RaISe/Publications-2012/

Implications for the Northern Ireland block grant – 'repercussiveness'

Another consideration in relation to the block grant is the concept of 'repercussiveness'. The arrangements for devolved funding are set out in HM Treasury's Statement of Funding Policy. This states:

> ***where decisions taken by any of the devolved administrations or bodies under their jurisdiction have financial implications for departments or agencies of the United Kingdom Government*** *or, alternatively, decisions of United Kingdom departments or agencies lead to additional costs for any of the devolved administrations, where other arrangements do not exist automatically to adjust for such extra costs,* **the body whose decision leads to the additional cost will meet that cost.**[38] *[emphasis added]*

In other words, if the policy decisions of a devolved administration had financial repercussions for the UK Government, the devolved administration would have to pay for those repercussions.

A hypothetical example in the current context helps to illustrate the concept. If the NICSC Scheme continued to offer higher levels of compensation than an equivalent compensation scheme in GB - and members of the Home Civil Service were able to successfully argue in a court that their rights were legally the same as an NICSC Scheme member – Northern Ireland could be liable for any additional costs incurred by departments in GB.

4.2. The trade union position

In evidence to CFP on 7 March 2012, a DFP official confirmed that the Northern Ireland Public Service Alliance (NIPSA) (the main public sector union) had been consulted on the proposed changes to the NICSC Scheme but had not formally responded at that date. In the absence of a formal NIPSA position this section looks at evidence for the trade union's from other sources.

NIPSA's 2010 annual report indicates that it supported the PCS legal challenge to the UK Government's amendments:

> *..one of the Civil Service unions, PCS, assisted by NIPSA, decided to instigate a judicial review of the revised arrangements on the grounds that they were detrimental to most members and potentially unlawful.*[39]

NIPSA's 2011 annual report contains the following statement:

> *Trade Union Side reiterated its position that the changes [to the compensation scheme] were unnecessary as well as detrimental.*[40]

In addition, Brian Campfield, NIPSA General Secretary was quoted in *Belfast Telegraph* as saying the UK Government's policy was:

> *…an attack on the redundancy compensation scheme so they can get away with making redundancies on the cheap.*[41]

Taken together, these statements give a reasonably strong indication of the position NIPSA is likely to take in response to the proposed changes to NICSC Scheme and also to the

38 HMT (2010) 'Funding the Scottish Parliament, National Assembly for Wales and Northern Ireland Assembly: a statement of funding policy' available online at: http://cdn.hm-treasury.gov.uk/sr2010_fundingpolicy.pdf (accessed 15 March 2012) (see page 12)

39 NIPSA 'Annual Report 2010' available online at: http://www.nipsa.org.uk/Docs/Publications/2011/AR2010-web

40 NIPSA 'Annual Report 2011' available online at: http://www.nipsa.org.uk/getattachment/66766a3b-f24e-48cc-93f6-db42e176a15e/Annual-Report-2011.aspx (accessed 15 March 2012)

41 Belfast Telegraph 'Civil servants are facing redundancy on the cheap: union', 8 September 2010, available online at: http://www.belfasttelegraph.co.uk/news/local-national/northern-ireland/civil-servants-are-facing-redundancy-on-the-cheap-union-14936734.html#ixzz1p0u4KhgM (accessed 15 March 2012)

proposed amendments to the Superannuation (Northern Ireland) Order 1972 to remove the obligation to secure agreement with unions.

4.3. Support for reform

Whilst it is understandably the case that public sector unions would oppose changes both to the *Superannuation (Northern Ireland) Order 1972* and to the NICSC Scheme, it is also the case that there is an alternative view. For example, it has been argued by some commentators that tackling the cost of civil service compensation is an important element of addressing national debt:

> *If the national debt is going to be tackled public sector reform is absolutely vital. PCS have fought a battle in the high court regarding redundancy pay, defending the current Civil Service Compensation Scheme (CSCS), which, under existing rules, entitles civil servants to severance payouts worth as much as six years' salary. The redundancy scheme is so expensive that many ministries have pools of hundreds of employees who do not have allocated work but are not sacked because it is too expensive.*[42]

It should perhaps also be noted that there was an element of political consensus on the need for reform in GB:

> *The move to reform civil service redundancy payments has bipartisan support as the previous Labour government tried to reform the system - however, even though all other unions agreed the PCS mounted a legal challenge which overturned the previous administration's efforts. The coalition government agrees with its predecessor and argues that the reform is needed as the current system is prohibitively expensive especially in austere times.*[43]

4.4. Impact assessments

Equality

DFP screened the Bill for equality impacts and concluded that there were no impacts on any of the section 75 categories. It also concluded that, because the policy relates to payments to staff, there are no opportunities promote equality of opportunity for people within the section 75 groups.[44]

One possible weakness in this analysis is that it is presumably more likely that it would be older staff that are likely to avail of any future redundancy package, so there may be an impact on older people vis-a-vis younger people. Members may wish consider this aspect.

Human rights

The second court case brought against the UK Government led to a ruling on compliance with the *European Convention on Human Rights* (see section 1.3 above). The court found that nothing in the *Superannuation Act 2010* interfered with accrued pension rights.

It was further found that, although there was interference with compensation rights, it was not the place of the courts to investigate the macro-economic policies of government. As the Act was primarily introduced as a means of controlling potential costs with a view to managing the UK's deficit, the court declined to rule in favour of the unions.

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42 Dunn, J (2010) 'Unions still in denial over the scale of the fiscal crisis' available online at: http://www.taxpayersalliance.com/economics/2010/09/unions-still-in-denial-over-the-scale-of-the-fiscal-crisis.html (accessed 23 March 2012)

43 'Government's Civil Service Redundancy Plans Face Judicial Review As PCS Rejects Arrangement' http://www.egovmonitor.com/node/40271 (accessed 15 March 2012)

44 Superannuation Bill - Equality Screening, available online at: http://www.dfpni.gov.uk/superannuation-bill-equality-screening (accessed 15 March 2012)

5. Concluding remarks

This paper has presented evidence in relation to a number of aspects of the Bill before the Assembly. It has attempted to unpack the concept of 'parity' in relation to the Bill's provisions with a view to illustrating how a break in parity might lead to expenditure pressures on the NI block grant.

The research also reports that potential savings from a new NICSC Scheme under the Bill could be significant. It highlights that, whilst there is likely to be opposition from trades unions, there have also been reformist arguments made by commentators. It appears that there may be potential for the Assembly process in the *Superannuation (Northern Ireland) Order 1972* in relation to making an NICSC Scheme to be changed if there is sufficient political support for such a move.

Appendix 1 – current and proposed terms for compensation scheme

Current Exit Terms			**Proposed Terms**
Compulsory Redundancy Terms These terms are intended to be used when an individual's contract is being terminated compulsorily (eg on redundancy but also for "structural" departures of senior staff).	**Early Retirement** **> 50 with min of 5 years service** Immediate payment of pensions & associated lump sum without reduction for early payment. Pensionable service enhanced by up to 6 2/3 years* plus a lump sum compensation payment of the greater of (a) 6 months pay & (b) statutory redundancy which is reduced by 1/36th for each month the person is aged > 57. Under the new proposals the current terms will be modified to remove the tapering which currently applies to the compensation lump sum paid to those between 57 & 60 (backdated to 16 July 2008) & a full 6 months compensation lump sum will be paid to those > 60 (backdated to 1 April 2009.	**Early Severance - (Standard terms)** **< 50 (or > 50 with < 5 years)** 1 months pay per year of service plus 1 months pay per year of service after the alter of (a) 5 years service and (b) age 30 plus 1 months pay per year of service after age 35. Subject to a maximum of 3 years pay. Early Severance (1987 terms – apply to staff in mobile grade @ 1/4/87) < 40 on departure – as standard terms but not capped. Aged between 40 & 50 on departure - standard terms topped to the capital value of the early retirement package under pre-1987 terms. Cost can exceed 6 years pay.	**Compulsory Redundancy Terms** Employer must offer Voluntary Redundancy Terms before moving to Compulsory Terms 2 Year qualifying service condition Compensation payment of 1 months pay for each year of service - subject to a maximum of 12 months pay for those under pension age. Tapering will apply – Maximum compensation will be limited to number of months to pension age plus 6 months. Employees earning less than £23,000 per annum will be deemed to be earning that amount for the purposes of calculating the compensation payment. Employees earning more than £149,820 per annum will be deemed to be earning that amount when calculating the compensation payment. The lower and higher deemed earnings will not apply to calculation of pension benefits.

Current Exit Terms			Proposed Terms
			Redundancy payments will be capped @ a maximum of 6 months pay for those > pension age. Immediate access to pension. Members may opt for the Employer to use their compensation payment to buy-out the actuarial reduction, which would otherwise apply, to members who are over age 50 (55 if joined scheme on or after 6 April 2006). Employers will not meet any buy out costs due in excess of the compensation amount but members may buy out the short-fall – otherwise must take compensation payment and draw pension on reduced basis or leave pension preserved to pension age. Employers have no Flexibility to vary Compulsory Redundancy Terms.

Current Exit Terms			Proposed Terms
Voluntary Redundancy Terms Employers must offer Voluntary Terms prior to moving to Compulsory	**As for compulsory above.**	**As for compulsory above.**	**Voluntary Redundancy Terms** 2 Year qualifying service condition – although Employers can waive the qualifying period or reduce it. Compensation payment of 1 months pay for each year of service – subject to maximum of 21 months for those under pension age. Tapering will apply – Maximum compensation will be limited to number of months to pension age plus 6 months. Employees earning less than £23,000 per annum will be deemed to be earning that amount for the purposes of calculating the compensation payment. Employees earning more than £149,820 per annum will be deemed to be earning that amount when calculating the compensation payment. The lower and higher deemed earnings will not apply to calculation of pension benefits.

Current Exit Terms			Proposed Terms
			Employers must offer early payment of pension to those aged 50 (55 if member joined after 6 April 2006) or over & chose to fund part or all of the cost of buying out the actuarial reduction from their compensation payment. If compensation payment is insufficient to meet the cost of buy out, then the Employer must fund the difference. If there is residual compensation payment after buy out the member will be paid the balance. Redundancy payments will be capped @ a maximum of 6 months pay for those > pension age. Immediate access to pension.

Current Exit Terms			Proposed Terms
Flexible Retirement/Severance Employers can invite individual applications to assist with Structural change.	**Early Retirement** **> 50 (& under pension age) with minimum of 5 years service** Immediate payment of pensions & associated lump sum without reduction for early payment. Pensionable service enhanced by up to 6 2/3 years*	**Early Severance** **Under 50 (or between 50 & 60 with < 5 years service).** Minimum of 12 months service required. 2 weeks pay per year of service during the 1st 5 years plus 3 weeks pay per year of service during years 5-10 plus 4 weeks pay per year of service after 10 years plus 2 weeks pay per year of service after reaching age 40. Subject to a maximum of 2 years pay.	**Voluntary Exit Terms** 2 Year qualifying service condition – although Employers can waive the qualifying period or reduce it. Compensation payment of 1 months pay for each year of service – subject to maximum of 21 months for those under pension age. Tapering will apply – Maximum compensation will be compared to number of months to pension age plus 6 months. Employees earning more than £149,820 per annum will be deemed to be earning that amount when calculating the compensation payment. Employer flexibilities: Employer can offer compensation payment of up to twice the standard tariff up to overall limit of 21 months, subject to approval of Department of Finance and Personnel. The minimum an Employer can offer is equal to the amount due under statutory redundancy terms. Employers may, where the member earns less than £23,000, deem the member to be receiving that amount for purposes of calculating the compensation payment only. Employers can offer to top up the compensation payment on current service for those who have reached minimum retirement age (50, or 55 where member joined service on or after 6 April 2006) and wish to take their pension benefits early without reduction.

Current Exit Terms			Proposed Terms
Approved Early Retirement Members over age 55 with more than 25 years service may apply to leave on these terms, subject to Employer agreement/funding of costs until pension age. Otherwise Employers can invite individual applications to assist with Structural Change or limited postability	**> 50 (age 55 for new entrants from April 2006) with minimum of 5 years service** Immediate payment of pension & associated lump sum without reduction for early payment.	**N/A**	**Voluntary Exit Terms** As for voluntary exit terms set out above.

Appendix 2 – Summary of comparative figures for current and proposed compensation arrangements

Classic, classic plus and premium

	Current arrangements	**Proposed arrangements**
	Flexible Early Severance	**Voluntary Exit/Voluntary Redundancy**
Member aged 35 with 15 years reckonable service and final pensionable earnings of £20,000	Lump sum compensation= **£17,307**	Lump sum compensation= **£28,750**
Member aged 45 with 25 years reckonable service and pensionable earnings of £40,000	Lump sum compensation= **£73,076**	Lump sum compensation= **£70,000**

	Current arrangements	**Proposed arrangements**
	Flexible Early Retirement	**Voluntary Exit/Voluntary Redundancy**
Member aged 55 with 15 years reckonable service and final pensionable earnings of £20,000	A: Annual compensation payment to pension age = **£4,950** **B**: Lump sum compensation = **£5,299** Total payable = **£30,048**	Lump sum compensation = **£28750**
Member aged 55 with 30 years reckonable service and final pensionable earnings of £40,000	A: Annual compensation payment to pension age = **£17,400** B: Lump sum compensation = **£13,995** Total payable = **100,995**	Lump sum compensation = **£70,000**

	Compulsory Early Severance	**Compulsory Exit**
Member aged 35 with 15 years reckonable service and final pensionable earnings of £20,000	Lump sum compensation = **£33,333**	Lump sum compensation = **£23000**
Member aged 45 with 25 years reckonable service and pensionable earnings of £40,000	Lump sum compensation = **£120,000**	Lump sum compensation = **£40,000**

	Current arrangements	Proposed arrangements
	Compulsory Early Retirement	**Compulsory Exit**
Member aged 55 with 15 years reckonable service and final pensionable earnings of £20,000	A: Annual compensation payment to pension age = **£4,950** B: Lump sum compensation = **£15,299** Total payable = **£40,049**	Lump sum compensation = **£23000**
Member aged 55 with 30 years reckonable service and final pensionable earnings of £40,000	A: Annual compensation payment to pension age = **£17,400** B: Lump sum compensation = **£33995** Total payable = **£120,995**	Lump sum compensation = **£40,000**

It should be noted that the members above who are over age 50 will also receive a further additional compensation payment from pension age which is equivalent to the enhanced element of the member's benefits.

This is not costed above as the benefits payable will depend on the longevity of the member.

For comparison purposes if a Department had a voluntary redundancy exercise which included 100 members of staff aged approximately age 55 and with 30 years the cost under the current scheme the cost would be over £12 million. However, under the proposed revised scheme the scheme cost would be £7 million with a saving of approximately £5 million.

Nuvos

Nuvos was introduced in July 2007 and is not yet covered under the rules of the Civil Service Compensation Scheme (Northern Ireland). Under interim arrangements members of nuvos who leave on voluntary or compulsory redundancy are entitled receive an ex gratia payment 1 month pay for each year of service. This is the equivalent to the proposed terms.

2B. Detailed calculations of comparative figures provided in previous table (2A)

	Current arrangements	**Proposed arrangements**
	Flexible Early Severance	**Voluntary Exit/Voluntary Redundancy**
Member aged 35 with 15 years reckonable service and final pensionable earnings of £20,000	**A**:2 weeks final pensionable earnings for each year of reckonable service during the first 5 years of qualifying service = **£38,46** **B**: 3 weeks final pensionable earnings for each year of reckonable service during the next 5 years of qualifying service = **£5,769** **C**: 4 weeks final pensionable earnings for each year of reckonable service after the first 10 years of qualifying service = **£7,692** **A+B+C = £17,307**	1 month pay for each year of service up to a maximum of 21 months. Lower Pay protection applies – salary deemed to be £23,000. = **£28,750**
Member aged 45 with 25 years reckonable service and pensionable earnings of £40,000	**A**:2 weeks final pensionable earnings for each year of reckonable service during the first 5 years of qualifying service = **£7692** **B**: 3 weeks final pensionable earnings for each year of reckonable service during the next 5 years of qualifying service = **£11,538** **C**: 4 weeks final pensionable earnings for each year of reckonable service after the first 10 years of qualifying service = **£46,154** **D**: 2 weeks final pensionable earnings for each year of reckonable service after age 40 = **£7,692** **A+B+C+D = £73,076**	1 month pay for each year of service up to a maximum of 21 months = **£70,000**

	Current arrangements	**Proposed arrangements**
	Flexible Early Retirement	**Voluntary Exit/Voluntary Redundancy**
Member aged 55 with 15 years reckonable service and final pensionable earnings of £20,000	Annual compensation payment (ACP)equivalent to enhanced pension until pension age and from pension age an annual compensation payment reduced to the amount of enhancement **A**: ACP to pension age = **£4950** **B**: Lump sum compensation = **£5,298** Total cost = **£30,048**	1 month pay for each year of service up to a maximum of 21 months. Lower Pay protection applies – salary deemed to be £23,000. = **£28750**
Member aged 55 with 30 years reckonable service and final pensionable earnings of £40,000	Annual compensation payment (ACP)equivalent to enhanced pension until pension age and from pension age an annual compensation payment reduced to the amount of enhancement **A**: ACP to pension age = **£17,400** **B**: Lump sum compensation = **£33,995** **Total cost = £120,995**	1 month pay for each year of service up to a maximum of 21 months = **£70,00**

	Current arrangements	**Proposed arrangements**
	Compulsory Early Severance	**Compulsory Exit**
Member aged 35 with 15 years reckonable service and final pensionable earnings of £20,000	**A**: 1 month final pensionable earnings for each year of reckonable service = **£25,000** **B**:1 month final pensionable earnings for each year of reckonable service after age 30 = **£8,333** **A+B=£33,333**	1 month pay for each year of service up to a maximum of 12 months. Lower Pay protection applies – salary deemed to be £23,000. = **£23,000**
Member aged 45 with 25 years reckonable service and pensionable earnings of £40,000	**A**: 1 month final pensionable earnings for each year of reckonable service = **£83333** **B**:1 month final pensionable earnings for each year of reckonable service after age 30 = **£50000** **C**: 1 month final pensionable earnings for each year of reckonable service after age 35 = **£33,333** **A+B+C=£167,0000 (limited to maximum of 3 years final pensionable earnings = £120,000**	1 month pay for each year of service up to a maximum of 12 months = **£40,000**

	Current arrangements	**Proposed arrangements**
	Compulsory Early Retirement	**Compulsory Exit**
Member aged 55 with 15 years reckonable service and final pensionable earnings of £20,000	Annual compensation payment (ACP)equivalent to enhanced pension until pension age and from pension age an annual compensation payment reduced to the amount of enhancement **A**: ACP to pension age =£4,950 **C**: Lump sum compensation =£15,299 **Total =40,049**	1 month pay for each year of service up to a maximum of 12 months. Lower Pay protection applies – salary deemed to be £23,000. = **£23,000**
Member aged 55 with 30 years reckonable service and final pensionable earnings of £40,000	Annual compensation payment (ACP)equivalent to enhanced pension until pension age and from pension age an annual compensation payment reduced to the amount of enhancement **A**: ACP to pension age = **£17,400** **C**: Lump sum compensation = **£33,995** **Total =120,995**	1 month pay for each year of service up to a maximum of 12 months = **£40,000**

Research and Information Service
Research Paper

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Colin Pidgeon

Consultation: legal requirements and good practice

This Briefing Paper is a follow-up to RaISe Bill Paper 59/12 The Superannuation Bill.[1] Members of the Committee for Finance and Personnel requested additional research. The Paper concerns the duties that the Bill would place on the Department of Finance and Personnel to consult with trades unions, and to report the outcome of the consultation to the Assembly.

1 RaISe (2012) 'The Superannuation Bill' available online at: http://www.niassembly.gov.uk/Documents/RaISe/Publications/2012/finance_personnel/5912.pdf (accessed 20 April 2012)

Executive Summary

The research presented in this Paper highlights a number of issues that the Committee may wish to consider.

Firstly, whether the requirement in the Superannuation Bill for consultation fits with the meaning of consultation. Consultation is defined as a process of dialogue and an exchange of views. It is not merely the provision of information. In addition, the research suggests that there is a degree of tension between the concept of consultation in the Bill and with the concept of negotiation.

The research also highlights good practice in relation to consultation. This good practice indicates a minimum period for consultation. Taken together with the legal definition of proper consultation, it is suggested that there is scope for the Bill's provisions to be strengthened in this regard.

This view is also supported by other statutory provisions. Some examples require what might be considered to be a more thorough reporting of the consultation process than currently provided for in the Bill.

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Introduction

The *Superannuation Bill* passed second stage in the Assembly on 26 March 2012. During an initial research briefing to the Committee for Finance and Personnel (CFP) on 27 March, the Research and Information Service was asked to provide follow-up research. In particular, this related to the duties the Bill will impose on the Department of Finance and Personnel (DFP) to consult with trades unions and to report the outcome of the consultation to the Assembly.

To further assist CFP's scrutiny of the Bill, this Paper provides detail on:

- Legal definitions of consultation (section 1);
- The difference between consultation and negotiation (section 2);
- Good practice in relation to consultation (section 3);
- Other instances of legislation which places a duty on a body to consult and report to the legislature (section 4); and,
- Overall conclusions and key issues for the Committee's consideration (section 5).

1. What is consultation?

This section addresses the concept of consultation and provides clarity on what this term actually means. Sample statutory definitions are provided so that CFP can consider whether the provision in the Bill as drafted is satisfactory.

Black's Law Dictionary (9th edition) defines 'consultation' as "the act of seeking the advice or opinion of someone."

The Labour Relations Agency has stated that:

> *The purpose of consultation is to give everyone involved an early opportunity to share the problem and discuss options. It can encourage better co-operation between managers and employees, reduce uncertainty, and lead to better decision making.*[2]

1.1. Statutory definitions

The Information and Consultation of Employees Regulations

A specific statutory definition can be found in *The Information and Consultation of Employees Regulations (Northern Ireland) 2005* (SR 2005 no.47) ("the ICE Regulations"):

> *"consultation" means the exchange of views and establishment of a dialogue between –*
>
> *(a) information and consultation representatives and the employer; or*
>
> *(b) in the case of a negotiated agreement […] the employer and the employees;*

The ICE Regulations give employees in organisations over a certain size the right to be informed and consulted about matters affecting their employment.[3] The duty to consult under these Regulations applies to 'undertakings'. The Regulations transpose into Northern Ireland the EC Directive 2002/14/EC *establishing a general framework for informing and consulting employees in the European Community*[4]. The Directive defines an undertaking as "a public or private undertaking carrying out an economic activity, whether or not operating for gain".

The Cabinet Office's Code of *practice on informing and consulting employees in the civil service* states that:

> *The main activities of traditional central government departments concern the exercise of public authority (i.e. legislation, administration and policy development). As there is very little case law in this area, it is difficult to be clear on the number of government bodies which would be undertakings, although it is expected that there will be very few, if any.*[5]

However, the Cabinet Office Code also said that:

2 Labour Relations Agency (2007) 'Advice on handling redundancy' available online at: http://www.lra.org.uk/index/agency_publications-2/advice_and_guidance_on_employment_matters-3/advisory_guides2/advice_on_handling_redundancy-2.htm (accessed 24 April 2012) (see pages 10-11)

3 IDS Employment Law Brief 780 (2005) 'Collective redundancy consultation' (see page15)

4 http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2002:080:0029:0033:EN:PDF

5 Cabinet Office 'Code of practice on informing and consulting employees in the civil service' available online at: http://resources.civilservice.gov.uk/wp-content/uploads/2011/09/ec_info_consultation_tcm6-2411.doc (accessed 20 April 2012) (see paragraph 5)

> *The Government fully supports the principle that employees should be informed and consulted about the important issues affecting them regardless of whether they are working in what is legally defined as an undertaking.*[6]

From the UK Government's perspective at least, whilst government departments may not technically be caught by the requirements of the ICE Regulations, the civil service should be an exemplar of good practice. The Code:

> *…is intended to apply the general principles of the Regulations to central government departments and agencies which are not undertakings within the scope of the legislation. Departments should also encourage the adoption of the general principles as set out in this Code of Practice by their non-departmental public bodies.*[7]

The Department for Employment and Learning (DEL) is responsible for employment law in Northern Ireland. Its own guidance on the ICE Regulations takes a similar view to the Cabinet Office. It states that an undertaking:

> *…may also include […] Government bodies (both central and local), again if they carry out an economic activity. Ultimately it is a matter for the courts to decide (in the first instance, the Industrial Court) on a case-by-case basis, whether an organisation is carrying out an economic activity.*[8]

The ICE Regulation's definition therefore may or not legally apply to NICS departments depending on how the courts might choose to interpret the law. But, either way, they suggest that consultation is a two-way process of **discussion and dialogue**, rather than simply the provision of information. Members may wish to keep this in mind when considering the statement made by a union official in evidence to the Committee:

> *We have not had negotiations. We have only had information-provision sessions on what the Minister was thinking and where the court cases were at in GB, and we were told that the intention was probably to proceed down that route at some stage.*[9]

At the same time, it should be noted that currently the discussion has related to the *Superannuation Bill* and not specifically to the proposed changes to the Northern Ireland Civil Service Compensation Scheme (the NICSC Scheme). This means that there may be further engagement between DFP and the unions following the passage of the Bill.

The ICE Regulations seem relevant to the *Superannuation Bill* because they are based on the principle that employees should be informed and consulted about issues that affect their employment. More specific provisions relating to redundancy proposals are contained in other legislation presented below.

The Employment Rights (Northern Ireland) Order 1996

The *Employment Rights (Northern Ireland) Order 1996* imposes a statutory duty on employers to consult with employee representatives when they are proposing to make 20 or more redundancies.

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6 Cabinet Office 'Code of practice on informing and consulting employees in the civil service' available online at: http://resources.civilservice.gov.uk/wp-content/uploads/2011/09/ec_info_consultation_tcm6-2411.doc (accessed 20 April 2012) (see paragraph 3)

7 Cabinet Office 'Code of practice on informing and consulting employees in the civil service' available online at: http://resources.civilservice.gov.uk/wp-content/uploads/2011/09/ec_info_consultation_tcm6-2411.doc (accessed 20 April 2012) (see paragraph 3)

8 DEL (2008) 'Information and communication in the workplace – a guide' available online at: http://www.delni.gov.uk/information_and_consultation_april30_2008.pdf (accessed 20 April 2012) (see page 7)

9 Official Report, 27 March 2012, available online at: http://www.niassembly.gov.uk/Documents/Official-Reports/Finance_Personnel/Superannuation%20Bill%20Trade%20Union%20Briefing.pdf (accessed 17 April 2012) (see page 4)

Article 216(2) provides for a minimum period of consultation:

> *The consultation shall begin in good time and in any event—*
>
> *(a) where the employer is proposing to dismiss 100 or more employees as mentioned in paragraph (1), at least 90 days; and*
>
> *(b) otherwise, at least 30 days;*
>
> *before the first of the dismissals takes effect.*[10]

Article 216(4) prescribes the form of the consultation:

> *The consultation shall include consultation about ways of—*
>
> *(a) avoiding the dismissals;*
>
> *(b) reducing the numbers of employees to be dismissed; and*
>
> *(c) mitigating the consequences of the dismissals;*
>
> *and shall be undertaken by the employer with a view to reaching agreement with the appropriate representatives.*[11]

The *Superannuation Bill* relates to the consultation process for determining the NICSC Scheme that would apply in a redundancy situation. **It does not relate to a redundancy programme in itself**. Despite this, Members may wish to consider the consultation requirements of the *Employment Rights (Northern Ireland) Order 1996* in relation to Clause 2 of the Bill, which imposes the consultation duty on DFP.

In particular, CFP may wish to consider if there is a case for specifying a minimum period for the consultation (please refer to the examples of other statutory consultation provisions presented in Section 4 below). The purpose of providing a minimum period may be to ensure that there is sufficient time allowed for a meaningful process.

Other statutory provisions

There is a wide range of further employment-related legislation that includes some form of duty to consult, including (although this is not an exhaustive list):

- the Transnational Information and Consultation of Employees Regulations 1999;
- the European Cooperative Societies (Involvement of Employees) Regulations 2006;
- the Companies (Cross Border Mergers) Regulations 2007;
- the European Public Limited-Liability Company (Employee Involvement) (Northern Ireland) Regulations 2009;
- the Transfer of Undertakings (Protection of Employees) Regulations 2006; and,
- the Service Provision Change (Protection of Employees) Regulations (Northern Ireland) 2006.

Officials in DEL have advised the author that they are not aware of any legislation within the DEL remit which includes a duty on NICS departments to consult with employee representatives and to report the outcome to the Assembly.[12] There are, however, some examples from other policy remits (such as Health) which are presented in Section 4 of this paper.

10 http://www.legislation.gov.uk/nisi/1996/1919/article/216

11 http://www.legislation.gov.uk/nisi/1996/1919/article/216

12 Personal communication from DEL official

1.2. Case Law

Case law in the field of employment is complex. For example, there is case law which determines whether employees are considered to be employed at the same establishment. This is important because the duty to consult in a redundancy situation under the *Employment Rights (Northern Ireland) Order 1996* is only triggered when all employees are in the same establishment. The question of whether a number of sites or divisions in a company are one establishment or more has frequently arisen.[13]

This Paper does not seek to give a comprehensive explanation of all potentially relevant employment case law. Instead, a particular judgement which contains important principles in relation to consultation is highlighted below.

The Weatherup Judgement

A judgement by Weatherup J, handed down on 11 September 2007, addresses the issue of proper consultation process: "it is common ground that, whether or not consultation of interested parties and the public is a legal requirement, if it is embarked upon **it must be carried out properly."** [emphasis added][14] In his judgement, Weatherup J cited another judgement,[15][2] in which the four requirements of consultation were stated:

> *To be proper, consultation must be undertaken at a time when proposals are still at a formative stage; it must include sufficient reasons for particular proposals to allow those consulted to give intelligent consideration and an intelligent response; adequate time must be given for this purpose; and the product of consultation must be conscientiously taken into account when the ultimate decision is taken.*

In the light of these requirements, the consultation duty the Superannuation Bill will place on DFP is discussed further in Section 5 of this Paper.

13 IDS Employment Law Brief 780 (2005) 'Collective redundancy consultation' (see page14)

14 [2007] NIQB 66 QUEEN'S BENCH DIVISION

15 [2] Ex p Coughlan [2000] 3 All ER 850, [2001] QB 213, para 108

2. What is the difference between consultation and negotiation?

The Cabinet Office's guidance on the ICE Regulations makes it clear that there is a difference between the concepts:

> *While consultation is different from negotiation or collective bargaining, it is important that any new consultation or communications procedures are compatible with, and complementary to, existing collective bargaining processes.*[16]

The question, then, is **how** does consultation differ? CFP raised this during its evidence session with the unions. This section looks at some sources which provide further clarity on the distinction between the two concepts.

Black's Law Dictionary (9th edition) defines 'negotiation' as "a consensual bargaining process in which the parties attempt to reach agreement on a disputed or potentially disputed matter."

Members should note that the trades unions have also been asked to provide their perspective on the distinction. To supplement that evidence, the following information is presented to allow CFP's to place the trades unions' response into a wider context.

2.1. A Trade Union view

A document on the union Unison's website notes that it is important to understand the difference between negotiation and consultation:

> ***Negotiation commits both parties to reaching agreement, whereas consultation is merely a commitment to exchange views.***
>
> *While consultation gives unions fewer automatic rights it can still be very valuable in ensuring that the views of the union and its members are progressed. Skilful negotiators are often very successful in converting consultation into negotiation.*
>
> ***Some employers confuse consultation with the conveying of information.*** *It is much more than this.*
>
> *Most agreements and supporting legislation require employers to undertake 'meaningful' consultation.*[17] *[emphasis added]*

2.2. Business theory

The 'Times 100 Teaching business studies by example' internet resource has the following to say:

> *Negotiation involves discussion to make agreements where the parties involved have some difference of interest or simply negotiation of how a task or project will be carried out. Consultation involves talking to interested parties both to explain developments and issues and* ***in order to canvas their views and ideas that they can contribute.***

16 Cabinet Office 'Code of practice on informing and consulting employees in the civil service' available online at: http://resources.civilservice.gov.uk/wp-content/uploads/2011/09/ec_info_consultation_tcm6-2411.doc (accessed 20 April 2012) (see paragraph 8)

17 Unison Activist Zone 'Working with the employer' available online at: http://www.unison.org.uk/activists/sh5_employer.asp (accessed 23 April 2012)

Typically negotiation involves a greater level of democracy in decision making than consultation. In a negotiation there may be considerable uncertainty about what the outcome will be. In contrast managers who consult their employees may already have decided the core of what they intend to do from the outset. [18] *[emphasis added]*

2.3. Examples from consultation agreements

Down District Council's Local Joint Consultative Committee's document gives a useful description of the distinction between the two concepts: [19]

4.0) Communication Vs Consultation

4.1 Communication is the provision and exchange of information between management and employees. Current, formal, methods use to support employee communication are:-

- Core Brief
- Team Meetings
- Job Chats
- Intranet
- Down Time
- Employee Communication and Consultation (ECC for non-Trade Union members)

Consultation is a process by which management and employees, or their representatives, jointly examine and discuss issues of mutual concern, through seeking acceptable solutions to problems through a genuine exchange of views and information. Consultation involves management actively meeting with employees and/or their representatives, and taking account of views before making a decision.

5.0) Consultation Vs Negotiation

5.1 Consultation is distinctly different from negotiation, for example over pay or changes to terms and conditions, where both the employer and the Trade Unions take responsibility for fulfilling the bargain. This is not the same as consultation and is not addressed within this policy. With consultation the responsibility for decision making remains with management. Negotiation is carried out via an alternative mechanism therefore by definition this is a consultation forum.

A further example is provided in the University of York's Employee Relations Structure:

Negotiation

Collective bargaining is the process by which the University of York and the recognised Trade Unions seek to reach agreement through negotiation on issues such as pay and terms and conditions of employment. ***It is distinct from consultation where the responsibility for decision making remains with management.***

Consultation

Consultation is the process by which management and employees or their representatives jointly examine and discuss issues of mutual concern. It involves mangers actively seeking and then taking account of the views of employees, either directly or through their representatives, before making a decision. ***Meaningful consultation depends on those being consulted having adequate information and time to consider it.*** *It is important to remember that merely providing information does not constitute consultation.*

18 http://businesscasestudies.co.uk/business-theory/people/communication-negotiation-and-consultation.html (accessed 23 April 2012)

19 http://www.downdc.gov.uk/Online-Documents/HR--LJCC-Agreement-(12-08).aspx (accessed 23 April 2012) (see page 2)

Communication

Communication is concerned with the interchange of information, instructions and ideas. Communication in this context enables the University of York to function efficiently and is either carried out directly (through face to face meetings and team briefings) or indirectly (through e-mails and newsletters). [20] *[emphasis added]*

2.4. Implications for the Superannuation Bill

The examples presented in this section build on the statutory definitions presented in Section 1. Consultation must be **more than just information provision**: there must also be dialogue and the canvassing of views with the possibility that these views may influence the design of the policy. However, consultation is **not** negotiation: the consulting body retains the decision-making responsibility, whereas in a negotiation the decision must to some degree be made collectively.

The *Superannuation Bill* provides for consultation to occur, and for DFP to report on whether agreement had been reached with the consultees. But given the definitions of consultation above, a question arises as to whether agreement is likely to be reached. Agreement is a word perhaps more commonly associated with negotiation than consultation, because the former requires consensus and the latter does not.

Issue for consideration: is the drafting of the Bill sufficiently clear? Does the requirement to consult sit comfortably with the aim of reaching agreement?

20 http://www.york.ac.uk/univ/unions/aut/20080520-ER-DraftStructure-V14.1-SMG-PR.pdf (accessed 23 April 2012) (see page 2)

3. Good practice on consultation

There are some differences between the process of public consultation and consultation with employees in relation to specific employment matters. Nevertheless, it may be argued that a number of the principles of good practice in relation to public consultation are generally applicable. This section includes detail on those principles as set out in UK Government and Northern Ireland Executive guidance.

Members may wish to consider whether consultation on proposed changes to the NICSC Scheme can be conducted in accordance with these principles under the terms of the *Superannuation Bill*.

3.1. UK Government guidance

In 2008, the Department for Business, Enterprise and Regulatory Reform (now replaced by the Department for Business Innovation and Skills) published the Government's *Code of Practice on Consultation*. This set out seven consultation criteria:

In the context of the *Superannuation Bill*, it is possibly Criterion 1 that is most significant. The question that has been raised by the Committee is whether – in the context of parity – there is genuinely scope for the consultees (in this case the trades unions) to influence the policy.

3.2. NI Executive guidance

The Office of the First and deputy First Minister's (OFMDFM) Practical Guide to Policy Making in Northern Ireland contains a short section on consultation. Among other things, it emphasises the need for consultation to be proper. This echoes the Weatherup judgement cited above:

> *Proceeding with no, or token consultation, may appear to save time in the short term, especially in a context of limited resources, but it can result in problems later.*[21]

Like the UK Government's Code, the guidance also sets 12 weeks as the standard period for consultation. It states that the minimum period for a formal consultation process is eight weeks.

3.3. Implications for the *Superannuation Bill*

The UK Government and OFMDFM guidance both emphasise the need for a reasonable period for consultation. Also, that the timing of the consultation should be appropriate – in terms of the development of the policy being consulted upon.

The *Superannuation Bill* does not specify when the consultation on a revised NICSC Scheme should take place, nor for how long (except that DFP must lay its report on the consultation before a revised scheme 'comes into operation'). One may reasonably assume, then, that the periods specified in the policy guidance would apply.

The UK Government's Code requires responsiveness to the consultation process. The *Superannuation Bill* requires consultation to be undertaken 'with a view to reaching agreement'. It may be argued that this phrase at least implies that the consultation must be meaningful.

Issue for consideration: does the absence of a specified timeframe for consultation create a risk that the consultation may not be conducted properly?

21 OFMDFM (2003) 'A Practical Guide to Policy making in Northern Ireland' available online at: http://www.ofmdfmni.gov.uk/policylink-a-practical-guide-to-policy-making.htm (accessed 19 April 2012) (see page 44)

4. Statutory duties to report on the outcome of consultation

Clause 2 of the Superannuation Bill provides for consultation with trades unions. Specifically, it creates a duty on DFP to "consult with a view to reaching agreement" on proposed changes to the NICSC Scheme. This is different from the current provision (in the Superannuation Order 1972) which also requires consultation. But the present Superannuation Bill removes the current requirement for those consulted to agree.

On the basis of the distinction between consultation and negotiation defined in Section 2, the current provisions have a much greater feel of negotiation. The requirement for agreement puts DFP in the position of collectively bargaining. The proposed duty is likely to be less onerous, and one where DFP retains the decision-making role.

Clause 2 also requires DFP to lay a report before the Assembly outlining the consultation process and whether or not agreement was reached.

This section provides some other examples of statutory provisions that require a report to be laid before the legislature in relation to consultation. Only one Northern Ireland example was found in the course of this research (see 4.1, below). Consequently, some – more relevant - examples from other jurisdictions are included.

4.1. The Autism Act (Northern Ireland) 2011

This Act requires the Department of Health, Social Services and Public Safety (DHSSPS) to prepare an autism strategy. Before doing so, it must consult other departments.

Section 2(9) of the Act also requires DHSSPS to report on the implementation of the strategy. Section 2(10) requires that the report to be laid before the Assembly.[22]

This duty, it will be noted, differs significantly from that imposed on DFP by the *Superannuation Bill*. The report is on implementation of the strategy, not on the consultation process.

4.2. The Health and Social Care Act 2008

Section 124(1) of this Act of the UK Parliament empowers the Secretary of State for Health (or in Wales, the Welsh Assembly Government) to:

> *…make provision modifying the regulation of social care workers, so far as appears to the appropriate Minister to be necessary or expedient for the purpose of securing or improving their regulation or the services which they provide or to which they contribute.*[23]

Before doing so, the Secretary of State must first publish a draft of the regulations and consult with relevant persons affected. Paragraph 9(2) of Schedule 9 to the Act provides that **no sooner than three months** after the laying of the draft regulations, a modified or unmodified set of regulations may be laid. It also provides that "a report about the consultation" must be laid before Parliament.

Unlike the *Public Services Reform (Scotland) Act 2010* (see below), this Act does not prescribe the **form** of the consultation report.

22 http://www.legislation.gov.uk/nia/2011/27/section/2

23 http://www.legislation.gov.uk/ukpga/2008/14/section/124

4.3. The Health Act 1999

As with the *Health and Social Care Act 2008*, this Act empowers the Secretary of State (or in Scotland, the Scottish Ministers) to regulate health care and associated professions. It also requires an order to be laid in draft and consulted upon.[24]

Also, like the *Health and Social Care Act 2008*, this Act provides for a minimum of three months between the publication of the draft order and the laying of a modified or unmodified order before Parliament. Again, it requires a report on consultation to be laid before Parliament. The form of the report is not prescribed.

4.4. The Public Services Reform (Scotland) Act 2010

Section 14 of this Act gives the Scottish Government the power to:

> *…by order make any provision which they consider would improve the exercise of public functions, having regard to— .*
>
> *(a)efficiency;*
>
> *(b) effectiveness; and*
>
> *(c) economy.*[25]

Section 17 of the Act gives additional powers to:

> *…by order make any provision which they consider would remove or reduce any burden, or the overall burdens, resulting directly or indirectly for any person from any legislation.*[26]

Before exercising these powers, the Scottish Government is required to consult with relevant bodies affected, to lay a draft order, and to lay an accompanying explanatory document before the Scottish Parliament.

Under section 25 (5), the explanatory document must detail:

> *(a) any consultation undertaken under subsection (4);*
>
> *(b) any representations received as a result of the consultation;*
>
> *(c) the changes (if any) made to the proposals mentioned in subsection (4) as a result of those representations.*[27]

Section 26 of the Act makes further provision in relation to consultation. Section 26(2) (c) requires the Scottish Ministers to "have regard to any representations about the proposed draft order that are made to them within 60 days" of the draft order being laid.

This last provision has the effect of ensuring a minimum period for the consultation process.

4.5. The Legislative and Regulatory Reform Act 2006

The Legislative and Regulatory Reform Act 2006 of the UK Parliament introduced similar powers to the Public Services Reform (Scotland) Act 2010 to:

> *…by order under this section make any provision which he considers would serve the purpose in subsection (2).*

24 http://www.legislation.gov.uk/ukpga/1999/8/schedule/3

25 http://www.legislation.gov.uk/asp/2010/8/section/14

26 http://www.legislation.gov.uk/asp/2010/8/section/17

27 http://www.legislation.gov.uk/asp/2010/8/section/25

(2) That purpose is removing or reducing any burden, or the overall burdens, resulting directly or indirectly for any person from any legislation. .

(3) In this section "burden" means any of the following— .

(a) a financial cost;

(b) an administrative inconvenience; (c)an obstacle to efficiency, productivity or profitability; or

(d) a sanction, criminal or otherwise, which affects the carrying on of any lawful activity.[28]

Before exercising this power, ministers must consult. When a modified, or unmodified, order is laid before Parliament following consultation, it must be accompanied by an explanatory document. This must:

give details of—

(i) any consultation undertaken under section 13;

(ii) any representations received as a result of the consultation;

(iii) the changes (if any) made as a result of those representations.[29]

Although these provisions appear similar to the Public Services Reform (Scotland) Act 2010, they are unlike that Act in that there is not a statutory minimum period for the consultation.

4.6. Implications for the *Superannuation Bill*

There are two differing elements that emerge from the statutory duties outline above:

- Specification of a minimum period for the consultation; and,
- Prescription of the form or content of the consultation report that must be laid before the legislature.

The issue of providing a minimum time period for consultation was raised in section 3. The second element – the form of the consultation report – may also be worthy of consideration.

Clause 2(3) of the Bill provides that DFP must provide information about:

(a) the consultation that took place for the purposes of Article 3(2), so far as relating to the provision,

(b) the steps taken in connection with that consultation with a view to reaching agreement in relation to the provision with the persons consulted, and

(c) whether such agreement has been reached.

This appears to be a potentially less robust requirement than the duty in, for example, the *Legislative and Regulatory Reform Act 2006*. This requires the report also to include details of any changes made to the provisions as a result of the consultation.

Issue for consideration: is the Committee content with the proposed reporting duty or should it be strengthened?

28 http://www.legislation.gov.uk/ukpga/2006/51/part/14

29 http://www.legislation.gov.uk/ukpga/2006/51/section/14

5. Overall conclusions and issues for consideration

The legal judgement presented in section 1.2 set out four requirements for proper consultation. These are considered in this concluding section in the light of the other findings of the research, and the key issues that arise are set out.

Consultation to be undertaken when proposals are at a formative stage

The *Superannuation Bill* does not specify **when** consultation is to be carried out. It does however specify that DFP must report to the Assembly on the outcome of the consultation **before** changes to the NICSC Scheme come into effect.

It was noted in RaISe Bill Paper 59/12 that the Executive has opted to pursue a policy of parity with GB in relation to compensation payments to civil servants in the event of redundancy. The question is, then, when are the proposals at a formative stage? If the Executive is introducing new terms in line with strict parity, then it might be possible to argue that the proposals are **already developed** in GB before they reach Northern Ireland.

On the other hand, the *Superannuation Bill* needs to be written in a way that allows flexibility for the Executive to depart from parity if it chooses. In that circumstance, the policy proposals would presumably be at a formative stage when first issued by DFP.

Issue for consideration: should the Bill specify that the consultation must take place at a time when proposals in GB are still at a formative stage?

Consultation to include sufficient reasoning to allow for an informed response

The proposed duty on DFP to report on the consultation process to the Assembly would allow MLAs (and committees) to interrogate the quality of that process. But, because there is no Assembly control over the legislative instrument that underpins the NICSC Scheme,30 the question may be asked, what could the Assembly do about it if it were not content with the process?

Issue for consideration: is there any value in creating a duty to report on the consultation to the Assembly in the absence of Assembly control over any amended NICSC Scheme?

Consultation must allow adequate time

The *Superannuation Bill* does not specify a minimum time period for consultation. The minimum periods specified in statutes presented in Section 4 of this Paper are either '60 days' or 'three months'. OFMDFM's guidance suggests a standard of 12 weeks for consultations.

Issue for consideration: does the absence of a specified timeframe for consultation create a risk that the consultation may not be conducted properly?

30 See section 2.2 of RaISe (2012) 'The Superannuation Bill' available online at: http://www.niassembly.gov.uk/Documents/RaISe/Publications/2012/finance_personnel/5912.pdf (accessed 20 April 2012)

The products of consultation must be taken into account

The policy of parity was discussed briefly above. If, in future, the Executive continues to follow parity, there may be a question of whether the response to a consultation in those circumstances is capable of being taken into account by DFP?

One possibility may be that the consultation process could persuade DFP to recommend departing from parity in response to specific local circumstances. Again, it should be noted that the *Superannuation Bill* needs to be written in a way that allows flexibility for the Executive to depart from parity if it chooses. But does the concept of parity necessarily undermine the value of consultation?

Issue for consideration: is the Committee content that consultation under the Superannuation Bill may be taken into account by DFP? In the context of parity, could such consultation influence the outcome?

In summary, Members may wish to consider these issues, and also that raised in section 2.4 (the meaning of 'consultation'), as part of their deliberations on the Bill.

Research and Information Service
Research Paper

Paper 000/00 31 August 2012 NIAR 569-12

Colin Pidgeon

The Superannuation Bill: further evidence

This Research Paper provides further evidence for committee stage of the Superannuation Bill. It focuses on issues relevant to the Committee for Finance and Personnel's consideration of potential amendments to the Bill, including Assembly procedure and negotiation versus consultation. Information is also provided on parity in public service pension provision in Northern Ireland.

Key points

- The Superannuation Act 1972 (and corresponding Superannuation (Northern Ireland) Order 1972) fundamentally altered Parliamentary control over superannuation for civil servants;
- The wider context for changes to superannuation provision for civil servants has changed dramatically since the early 1970s. At that time, benefits were being widened and improved. By contrast, the current context is for decreases in benefits;
- In relation to the Committee's consideration of potential amendments to the current Superannuation Bill, the research presented in this paper indicates a lack of statutory duties under prevailing or previous legislation which require an employer or government department 'to negotiate' with employee representatives; and,
- Northern Ireland's other (non-civil service) public sector pension schemes broadly follow parity with Great Britain. But there are some differences in local government, and education. This suggests it is not impossible to depart from parity to some degree without automatically creating unmanageable consequences for Northern Ireland's financial provision under the devolved funding arrangements.

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Introduction

This Research Paper is the third in a series by the Research and Information Service (RaISe) on the Superannuation Bill.

RaISe Bill Paper 59-12 provided a general overview of existing redundancy pay – both statutory, and that provided in the private and wider public sectors. It then concentrated on the provisions of the Superannuation Bill and raised some specific issues for Assembly Members' consideration.

RaISe Research Paper 69/12 concerned the duties that the Bill would place on the Department of Finance and Personnel to consult with trades unions, and to report the outcome of the consultation to the Assembly.

This paper provides further evidence in relation to additional issues explored by the Committee for Finance and Personnel (CFP) during an evidence session with departmental officials on 4 July 2012. It is provided to assist with CFP's consideration of possible amendments to the Bill in relation to:

- A duty on DFP to 'negotiate' changes to the NICSC Scheme rather than 'consult with a view to reaching agreement'; and,
- The Assembly procedure that applies when the Department for Finance and Personnel (DFP) introduces a new or amended Northern Ireland Civil Service Compensation (NICSC) Scheme,

Thirdly, the paper examines the application of the parity principle in relation to pension provision for civil servants, teachers, health service staff and local government employees.

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.

1. Negotiation

This section provides evidence in relation to the term 'negotiation' in statutory provisions. During its meeting of 4 July 2012, CFP agreed to the drafting of an amendment to clause 2(2) of the Bill for further consideration. Specifically, the issue is whether the duty placed on DFP by that clause "to consult with a view to reaching agreement" should be amended to require DFP 'to negotiate' rather than 'consult'.

This section is to supplies evidence to inform that further consideration by providing:

- Definition of 'negotiate';
- The findings of research into the use of the term 'negotiate' in statutory provisions; and,
- Further details of the negotiations on the replacement scheme in GB.

1.1. Definition of 'negotiate'

Black's Law Dictionary (9th edition) defines 'negotiation' as "a consensual bargaining process in which the parties attempt to reach agreement on a disputed or potentially disputed matter."

In the context of the Superannuation Bill, it may be helpful to contrast this definition with that in Black's Law Dictionary (9th edition) for 'consultation' which is defined as "the act of seeking the advice or opinion of someone."

Alternative definitions which may provide additional insight can be found elsewhere. For example, the following definition comes from a business dictionary:

> *Negotiation: The art of two sides going back and forth with their demands until some sort of compromise is reached where both sides are happy with the outcome. Usually no one will get everything that is desired. The key is to focus on the points that are the most important and arrive at a situation of mutual benefit […]*[1]

In addition, the Oxford Companion to American Law identifies two distinct forms of negotiation:

> *Negotiation strategy generally reflects two approaches. "**Competitive negotiation**" usually takes place when parties have opposing positions on a matter, or perceive that there is a limited resource—such as money, time, or authority—that must be divided between them. Competitive negotiation tends to be more adversarial because one party's gain often results in the other party's loss.*
>
> *"**Cooperative negotiation**" generally occurs when parties are motivated to find an agreement, often one that can more completely meet both parties' needs. While real differences exist, parties embrace a problem-solving approach in an attempt to find a more creative and satisfactory outcome.*[2]

It is apparent from these definitions that a negotiation involves an agreement being reached at the end of the process, whereas a consultation involves the exchange of views.

1 Doyle, C 'A Dictionary of Marketing' Oxford Reference Online. Oxford University Press available at: http://www.oxfordreference.com/views/ENTRY.html?entry=t325.e1193&srn=1&ssid=1103819767&authstatuscode=202 (accessed 27 July 2012)

2 Hall, K L (2002) 'The Oxford Companion to American Law', Oxford University Press, available online at: http://www.oxfordreference.com/views/ENTRY.html?entry=t122.e0643&srn=4&ssid=719318987&authstatuscode=202

1.2. Use of 'negotiate' in legislation

In evidence to CFP, a DFP official stated that:

> *"Negotiation" is a very specific term, and, in the context of employment law and in my experience, it is used solely to deal with pay. It is used to deal not with pension issues but with pay issues.*[3]

RaISe was asked to identify any evidence in relation to this point. A search of the database of statutes returned 115 pieces of UK primary legislation in which 'negotiate' occurs – from the Public Services (Social Value) Act 2012 back to the Bills of Exchange (Scotland) Act 1772.[4]

'Negotiate' occurs in a wide range of contexts, including:

- Arrangement of human tissue or organs for transplants;
- Surrogate pregnancy;
- Gambling;
- The terms of loans or other financial instruments and the settlement of debts;
- Consumer protection;
- The storage and transportation of gas;
- Divorce and separation;
- The Geneva Convention;
- Leases and other property-related transactions;
- Copyright and performance rights; and,
- The sale of livestock and the marketing of agricultural produce.

For the purposes of considering the Superannuation Bill, it is appears unlikely that such statutory provisions are particularly relevant because they do not concern terms and conditions of employment.

It should be noted that it seems that none of the statutes directly applies a duty on a Minister or government department to negotiate with employees or their representatives. Legal advice would be required to confirm that this interpretation is correct.

Nevertheless, there are, however, some statutory provisions in which the use of 'negotiate' may be of interest to CFP, even in the absence of an apparent duty imposed on Ministers or government departments.. These are detailed in Table 1.

3 Official report, 4 July 2012, available online at: http://www.niassembly.gov.uk/Documents/Official-Reports/Finance_Personnel/Superannuation%20Bill%20%20DFP%20Briefing.pdf (accessed 24 July 2012) (see page 10)

4 Text search conducted on 23 July 2012 for 'negotiate' in all primary legislation. Secondary legislation was excluded from the search. Database is online at: www.legislation.gov.uk

Table 1: use of 'negotiate' in employment-related contexts

Title of Legislation	Provision	Description	Comment/Relevance to the Superannuation Bill
Apprenticeships, Skills, Children and Learning Act 2009	Part 10, Chapter 4 (sections 227 to 241)	Established the School Support Staff Negotiating Body* as a statutory body and gives the Secretary of State powers to ratify agreements reached by it on school support staff pay and conditions. This Chapter also makes provision about the effect of ratifying an agreement.	The SSSNB not the Secretary of State is the body charged with negotiating. The authority for government is whether or not to ratify an agreement by others. Orders made to give effect to agreements are subject to annulment by resolution of either House of Parliament.
Legal Profession and Legal Aid (Scotland) Act	s.8 and 9	Provides a framework for the Scottish Legal Complaints Commission to handle consumer complaints about the service provided by legal practitioners which cannot be resolved at source.	s.8 provides that if the SLCC believes a practitioner has not attempted properly to reach a negotiated settlement with the complainer it can require the practitioner to make such an attempt – and the practitioner must set out in writing what steps have been taken.
Fire (Scotland) Act 2005	s.49 and 50	Enables the Scottish government to establish a statutory negotiating body for negotiating the terms and conditions of fire authorities' employees. In turn, the statutory body may permit local negotiation arrangements. Provides that any agreement on conditions is only legally enforceable if negotiated by the statutory body or locally. Also provides that the relevant negotiating body must have regard to guidance issued by the Scottish government.	Puts negotiation out of the direct hands of government ministers into a statutory body create for that purpose comprising both staff and management sides. Appears reminiscent of the Whitley arrangements for the NICS.
Fire and Rescue Services Act 2004	s.32 and 33	Equivalent provision to the Fire (Scotland) Act 2005, but applies to England and Wales	As above
Fire Services Act 2003	s.1	Allows the Secretary of State (DHSSPS in NI) to modify the terms of fire fighters' employment by Order. If there is a negotiating body in existence, the SoS must submit proposals to that body and allow at least 21 days for that body to consider the proposals and then take its report into consideration before making the Order.	The power to vary terms of employment is the Secretary of State's (or DHSSPS), subject to having taken into account the views of any negotiating body. The subsequent Order is then subject to negative resolution at Westminster or the Assembly

Title of Legislation	Provision	Description	Comment/Relevance to the Superannuation Bill
Employment Relations Act 1999	Schedule 1 3(3), 3(4) and 30(4)	Paragraphs 3(3) and 3(4) refer to negotiation in the context of collective bargaining and recognition of trades unions. 30(4) provides that a negotiating period is 30 days or such period as the parties may agree.	The wording of 30(4) may be helpful for constructing potential amendments should CFP decide that a minimum period for consultation or negotiation should be required.
Police Act 1996	s.61 and 62	Provides for the constitution and functions of the Police Negotiating Board for the UK. s.62(3) provides that before regulations are made in relation to police pensions (under section 25 of the Police (Northern Ireland) Act 1998), the Board must be consulted.	Regulations relating to police terms and conditions, pay and pensions are subject to negative resolution
British Library Act 1972	Schedule para 13	Provides that persons employed by the British Library who were immediately prior to employment civil servants shall be employed on terms that are at least as favourable as the job they left	A rare example of 'negotiate' being used in connection with a requirement on a person or body to conduct the negotiation in such a way that the outcome is favourable to the employee.
Local Government (Northern Ireland) Act 1972	s.40	Establishes the Local Government Staff Commission for NI with the function of promoting or assisting with the establishment of mechanisms for negotiating standard rates of remuneration, terms and conditions between councils and their employees.	The Staff Commission can make recommendations to councils. If the councils do not comply, the DOE may direct those councils to comply, having taken into account any recommendations they might make to it.

* Note. The School Support Staff Negotiating Body has subsequently been abolished by the UK Government in the Education Act 2011.

1.3. A duty to negotiate? Issues for consideration

There is an apparent absence of any statutes that impose a duty on a Minister or department to negotiate. This suggests that the introduction of such a duty by amendment of the Bill would be a novel approach.. Legal advice is required to confirm this finding, and to enumerate whether challenges or potential problems might arise in association with such a duty. Potential problems that occur include the questions: what happens if negotiations fail? Would the department be forced into arbitration? Could this mean, in effect, a trade union 'veto' by the back door?

1.4. Negotiations in GB on the replacement compensation scheme

To further inform CFP's consideration of possible amendments, this section of the paper provides detail on the negotiations undertaken by the UK Government with trades unions when introducing the scheme which DFP will seek to replicate, subject to passage of the Bill.

In evidence on 4 July, a DFP official stated:

> *In the detailed meetings and engagement that went on with the unions in GB, a number of options were looked at. Those are set out in the legal judgement, which found against the unions and for the Government. Some of that detail is contained therein. The options that were looked at included having a protected period and at a phasing-in period.*[5]

The referenced legal judgment appears to concern a the legal challenge to the new GB scheme. In the judgment, Mr Justice McCombe noted that initial proposals for transitional arrangements but were rejected on affordability grounds. This seems to accord with the official's reference to options being set out in the judgment. The Judge continued:

> *In late September 2010, other proposals were presented to the unions which included transitional arrangements for up to 5 years, giving continued access to Old Scheme benefits for a proportion of staff or up to a defined proportion of the value of compensation.*[6]

No such transitional arrangements appeared in the Scheme which is now in place in GB. The judgment does also refers to consideration of a 'payments cap'. It appears that this would have limited payments under the scheme for the higher-end earners in order to provide better compensation for lower-paid workers – which the UK Government argued was a 'legitimate aim'.

Having considered these options, Mr Justice McCombe reached the conclusion that:

> *In my judgment, reduction in benefits was "reasonable and commensurate" and the interference with A1P1 rights did not go beyond what was "reasonably necessary" to achieve the legitimate aim recognised on both sides of this case.*[7]

Finally on this issue, he stated:

> *In my judgment, it seems clear that the Defendant and the Treasury endeavoured to make sensible calculations of prospective costs of the Old Scheme and of possible alternative solutions. The detailed spreadsheets produced at the time and disclosed pursuant to the court's order demonstrate this.*[8]

1.5. Minimum periods for consultation

One further alternative that CFP has considered - instead of introducing a requirement for DFP to negotiate - is to strengthen the consultation requirements. Examples of statutes that impose particular requirements in relation to consultation were detailed in section 4 of RaISe Research Paper 69/12.

In the course of preparing this paper, an additional statutory provision has been identified that might have some bearing on CFP's consideration of potential amendments to the Bill.

1.5.1. The Occupational and Personal Pension Schemes (Consultation by Employers) Regulations (Northern Ireland) 2006

Under powers conferred by The Pensions (Northern Ireland) Order 2005[9] the Department for Social Development laid The Occupational and Personal Pension Schemes (Consultation by Employers) Regulations (Northern Ireland) 2006. These regulations prohibit the changing

5 Official report, 4 July 2012, available online at: http://www.niassembly.gov.uk/Documents/Official-Reports/Finance_Personnel/Superannuation%20Bill%20%20DFP%20Briefing.pdf (accessed 24 July 2012) (see page 9)

6 Case No: CO/2014/2011 between the Minister and the PCS union. 10 August 2011 (paragraph 55)

7 Case No: CO/2014/2011 between the Minister and the PCS union. 10 August 2011 (paragraph 62)

8 Case No: CO/2014/2011 between the Minister and the PCS union. 10 August 2011 (paragraph 63)

9 The Pensions (Northern Ireland) Order 2005, art 238(2)(a) allows the Department to specify the time to be allowed for consultation. http://www.legislation.gov.uk/nisi/2005/255/contents

of certain conditions of occupational and personal pension schemes by employers unless consultation, as specified, has taken place beforehand. The consultation has a minimum time period of 60 days.

Regulation 15(4) states that:

> *An appropriate period must be allowed for carrying out the consultation which in any event must not be less than 60 days.*[10]

Furthermore, regulations 15(3) and 15(5) add that all members to be consulted must be informed of the end date for written responses, and that if no responses are received by this date the consultation is to be regarded as complete.

The relevant employers bound by these regulations are those who run occupational pension schemes, personal pensions schemes, including employers, trustees and managers and anyone else able to make changes to the schemes, or employers who pay contributions to employees' personal pension schemes.[11] Public service pension scheme employers are excluded under regulation 4(1)(a).[12]

Whilst this requirement specifically excludes providers of public sector pension schemes, in seeking to ensure DFP is required to consult for a minimum period, CFP may wish to rely on these Regulations as a useful model.

1.6. A minimum period for consultation? Issues for consideration

Members may wish to consider whether inclusion of a minimum period for consultation in the Bill would provide a satisfactory safeguard for NICSC Scheme members in place of the trade union veto in the existing legislation. Such consideration may be subject to consideration of amendments in relation to a duty to negotiate. CFP might consider whether both amendment of the Bill to require negotiation and to require a minimum period for consultation is necessary – a negotiation duty may make any need for a specified consultation period redundant.

On the other hand, given potential problems arising from a statutory negotiation duty (subject to any legal advice CFP may seek), the addition of a minimum period as an alternative might arguably provide extra assurance to Members.

10 The Occupational and Personal Pension Schemes (Consultation by Employers) Regulations (Northern Ireland) 2006 http://www.legislation.gov.uk/nisr/2006/48/regulation/15/made

11 The Occupational and Personal Pension Schemes (Consultation by Employers) Regulations (Northern Ireland) 2006 http://www.legislation.gov.uk/nisr/2006/48/regulation/3/made

12 The Occupational and Personal Pension Schemes (Consultation by Employers) Regulations (Northern Ireland) 2006 http://www.legislation.gov.uk/nisr/2006/48/regulation/4/made Also lists other employers who are excluded for the purposes of these regulations (e.g. any employer employing fewer than 50 employees).

2. Assembly procedure

This section of the paper provides further evidence in relation to the legislative procedure for amendments to the NICSC Scheme.

2.1. Current legislative procedure

Under Article 3 of the Superannuation (Northern Ireland) Order 1972 (the 1972 Order), DFP may make and administer schemes to provide for pensions, allowances or gratuities for civil servants.

Article 4(8) of the 1972 Order states that:

> *Before a scheme made under Article 3, being the principal civil service pension scheme or a scheme amending or revoking that scheme, comes into operation the Ministry shall lay a copy of the scheme before Parliament.*[13]

Under this procedural mechanism, the Assembly is not required to vote to approve an NICSC Scheme, nor can it vote to annul.

It was noted in CFP's meeting of 4 July 2012 that this procedure differs from those for other Schemes made under the 1972 Order.[14] The 1972 Order also provides powers for various NICS Departments to make regulations providing pensions, allowances or gratuities for persons employed by local government, teachers and health service staff. Article 14(5) provides that in each instance, regulations are to be made subject to the negative resolution[15] procedure in the Assembly.[16]

2.2. Background to the current procedure

In evidence on 4 July 2012, a DFP official stated that the Department would not be willing to amend the Bill to provide a role for the Assembly beyond the current arrangement whereby an NICSC Scheme must be laid before it. She stated that DFP believes "the current arrangements are satisfactory."[17]

There are a number of different elements relating to the Superannuation Act 1972[18] (the 1972 Act) which Members may wish to consider when deciding whether CFP agrees that the arrangements are satisfactory, and these are detailed below.

2.2.1. Arrangements for Home Civil Service superannuation prior to 1972

The 1972 Act made significant changes to the way superannuation was handled for the Home Civil Service – and it was replicated in Northern Ireland through the 1972 Order.

Before the 1972 Act came into force, changes to public service pensions schemes required **primary legislation**. The Parliamentary Secretary to the Civil Service Department at the time, Mr David Howell, in moving the legislation at second reading, noted that:

13 http://www.legislation.gov.uk/nisi/1972/1073/article/4

14 See Official Report, 4 July 2012, available online at: http://www.niassembly.gov.uk/Documents/Official-Reports/Finance_Personnel/Superannuation%20Bill%20%20DFP%20Briefing.pdf (accessed 30 July 2012)(pages 6-7)

15 The 'negative resolution' procedure means that regulations take effect automatically after a certain date unless specifically annulled by resolution of the Assembly.

16 http://www.legislation.gov.uk/nisi/1972/1073/article/14

17 Official Report, 4 July 2012, available online at: http://www.niassembly.gov.uk/Documents/Official-Reports/Finance_Personnel/Superannuation%20Bill%20%20DFP%20Briefing.pdf (accessed 30 July 2012) (page 7)

18 http://www.legislation.gov.uk/ukpga/1972/11/contents

> *As life and Government become more complex, and as the pressures upon Parliament grow more intense, it just does not make sense that parliamentary time should be taken up by the passage of Bills designed to change public service pension schemes. It is now an anachronism that this condition of service alone should be enshrined in many cases in primary legislation. It helps to underline this to point out that Civil Service pensions, costing some £100 million per annum, are controlled in detail by Act of Parliament, while Civil Service pay, costing some 13 times as much, is not.*[19]

The 1972 Act removed the requirement to enact primary legislation for civil service pensions. At the same time, the original parliamentary control for health service pensions was changed from requiring affirmative resolution in each House of Parliament to becoming subject to annulment by a resolution of either House – equivalent to the Assembly's negative resolution procedure.

Mr Howell went on to give reasons for the 1972 Act applying different controls for civil service schemes from those for other public services:

> *I would not pretend that the circumstances of the Civil Service scheme and the circumstances of these other schemes can be distinguished as black from white—far from it—but there are two main reasons for not following precisely the pattern proposed for the Civil Service. First, and a very good reason, this is what the managers of the schemes themselves want and what the staff in every case, I understand, either want or are ready to accept. Second, what essentially distinguishes the other public services from the Civil Service here is that they either have a multiplicity of employers or a multiplicity of staff interests. I hope that I shall not be misunderstood if I say that the Civil Service is in these respects more monolithic, and this makes life a good deal simpler when administering a pension scheme. The need for uniformity and rather more formality makes a greater degree of parliamentary oversight desirable for the other public services.*[20]

In the second reading of the Bill in the House of Lords, Earl Jellicoe described the aims of the Bill as to:

> *Provide timely powers with which to carry through changes promptly, efficiently and with due regard both to the appropriate degree of Parliamentary involvement and to the interests of staff representatives.*[21]

These statements explain that pressure on parliamentary timetable was one reason for reducing the level of control over the superannuation arrangements for the public sector. It may be arguable, however, that the circumstances in the Northern Ireland Assembly are somewhat different from Westminster – the legislative calendar in the Assembly is generally not as short of time as at the UK level.

In addition, another argument was advanced. In the Commons, Mr Douglas Houghton (an opposition MP) noted that:

> *Another welcome feature of the Bill is the obligation to have consultation with staff interests. It is made obligatory, and this is very important. Though there has been no complaint over the years by the Staff Side about lack of consultation by the official side on superannuation matters,* ***it has been a nuisance when we have been told that we have to reach informal agreements which are subject to Ministerial and finally parliamentary consent and then***

19 House of Commons Official Report, 19 November 1971, available online at: http://hansard.millbanksystems.com/commons/1971/nov/19/superannuation-bill#S5CV0826P0_19711119_HOC_8 (accessed 30 July 2012) (see page 4)

20 House of Commons Official Report, 19 November 1971, available online at: http://hansard.millbanksystems.com/commons/1971/nov/19/superannuation-bill#S5CV0826P0_19711119_HOC_8 (accessed 30 July 2012) (see page 5)

21 House of Lords Official Report, 20 January 1972, available online at: http://hansard.millbanksystems.com/lords/1972/jan/20/superannuation-bill (accessed 30 July 2012) (see page 5)

> ***the matter will be at the hazard of the Government's legislative programme***.[22] *[emphasis added]*

This point might suggest an advantage of not making the NICSC Scheme subject to an Assembly procedural mechanism. Could it potentially be unhelpful to negotiators on both staff and management side to know that - following a process of consultation and engagement - the new NICSC Scheme might nevertheless be overturned by a vote?

On the other hand, if the purpose of greater Assembly control is to ensure that the consultation process is properly conducted it may be viewed as a safeguard, given that the democratically elected Assembly has ultimate authority over the use of public funds. In addition, the absence on parliamentary control in the early 1970s was in the context of the trades unions effectively being given a 'veto' over detrimental changes.

2.2.2. The ethos behind the 1972 Act

In evidence, the DFP official stated that:

> *We have done some research on why the 1972 Act was constituted as it was. It was set up that way following a joint committee that was formed as a subcommittee of the National Whitley Council back in 1968. Those arrangements were put in place with the agreement of the unions, and it was referred to earlier in the unions' submission that those arrangements have been in place for some time.*
>
> *In 1972, the arrangements were removed from primary legislation and were promulgated by the administrative acts of the relevant Minister. A number of safeguards were put in place at that time. We contend that one of those safeguards was about genuine consultation with staff interests, meaning the Whitley arrangements. I argue that the requirement to consult under the new changes that we are introducing have been strengthened, because there is now a duty to lay a report in the Assembly and to expose, for want of a better word, what steps have been taken by officials to secure agreement, albeit I accept the union veto is removed. That does not happen in any other engagement that officials have with the union. Think about pay, for instance. It does not happen on pay, which is a very significant issue that happens regularly.*
>
> *As a departmental official, I contend that the ethos behind the 1972 Act is still intact; in fact; one of the key tenets is actually being strengthened, because consultation with the union is being more exposed to Members by the fact that a report is going to be laid in the Assembly. It could be subject to whatever scrutiny Members wish to give it, and that is something that, I know, officials will not take lightly. Therefore, the Department would not be willing to propose such an amendment.*[23]

On the basis of the debates in Westminster at the time, it appears reasonable to argue that the ethos behind the 1972 Act **was that of genuine consultation**. Speaking during the passage of the Bill through the Lords in January 1972, Earl Jellicoe stated:

> *…the Government are both willing and able to give the assurance that the obligation to consult will be honoured in the spirit, not only in the letter: Consultation will be what it says: it will be real and meaningful.*[24]

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22 House of Commons Official Report, 19 November 1971, available online at: http://hansard.millbanksystems.com/commons/1971/nov/19/superannuation-bill#S5CV0826P0_19711119_HOC_8 (accessed 30 July 2012) (see page 7)

23 Official Report, 4 July 2012, available online at: http://www.niassembly.gov.uk/Documents/Official-Reports/Finance_Personnel/Superannuation%20Bill%20%20DFP%20Briefing.pdf (accessed 30 July 2012) (page 7)

24 House of Lords Official Report, 20 January 1972, available online at: http://hansard.millbanksystems.com/lords/1972/jan/20/superannuation-bill (accessed 30 July 2012) (see page 3)

In relation to the current Bill, DFP officials have consistently maintained in evidence to CFP that it is their intention that consultation fully on changes to the NICSC Scheme:

> *My colleagues on management side and my colleagues on trade union side spend a lot of time and effort, whatever the issue, to try genuinely to ensure a meeting of minds. We do that in a very honest and open way and invest a lot of time, commitment and effort into doing that to ensure the best deal that we can.*[25]

Of course, it may be noted that DFP's intention will be informed by the prevailing socioeconomic and political context within which the Superannuation Bill has been brought forward. This context is different from that in 1972, as detailed in the next section.

2.2.3. The wider context for the 1972 Act

The 1972 Act was passed at a time when superannuation benefits for civil servants were being **enhanced and improved**. These improvements were listed in the Lords as including:[26]

- The overhaul and improvement of injury benefits, including the extension of the injury scheme to manual workers, more liberal conditions of eligibility and improvements to the benefits themselves;
- Ill health retirement pension enhancement extended to the generality of staff not just those who had between 10 and 20 years' service;
- Widows' pensions increased from one third to one half of deceased officers' entitlement; and,
- Children's benefits increased – for example, a widow with two children would receive double the previous payment.

Other improvements were listed in the Commons:[27]

- The right to a preserved and transferrable accrued pension on changing jobs in the civil service; and,
- The reduction of the qualifying period for pension from 10 to five years.

It was also the Government's explicit intention that civil service pensions would be exemplars of good provision that the private sector would follow. For example, in the Commons, Mr Howell, the Government Minister said:

> *…when the Bill has become law, and when the powers in it have been used to implement the results of the reviews, public service superannuation should have taken on overall an up-to-date and streamlined look, and the public services, as so often in the past, will again be setting a good example in this field to other employers.*[28]

This point was also emphasised in the Lords by Earl Jellicoe:

> *…the Government intend to set an example both as an employer in the Civil Service and National Health Service and as the coordinator of the other public service pension schemes.*[29]

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25 Official Report, 4 July 2012, available online at: http://www.niassembly.gov.uk/Documents/Official-Reports/Finance_Personnel/Superannuation%20Bill%20%20DFP%20Briefing.pdf (accessed 30 July 2012) (page 10)

26 see House of Lords Official Report, 20 January 1972, available online at: http://hansard.millbanksystems.com/lords/1972/jan/20/superannuation-bill (accessed 30 July 2012) (see page 4)

27 House of Commons Official Report, 19 November 1971, available online at: http://hansard.millbanksystems.com/commons/1971/nov/19/superannuation-bill#S5CV0826P0_19711119_HOC_8 (accessed 30 July 2012) (see page 3)

28 House of Commons Official Report, 19 November 1971, available online at: http://hansard.millbanksystems.com/commons/1971/nov/19/superannuation-bill#S5CV0826P0_19711119_HOC_8 (accessed 30 July 2012) (see page 5)

29 see House of Lords Official Report, 20 January 1972, available online at: http://hansard.millbanksystems.com/lords/1972/jan/20/superannuation-bill (accessed 30 July 2012) (see page 1)

2.2.4. The current context

The Superannuation Bill now before the Assembly is a product of a different era. Public expenditure is under great scrutiny and budgets are being tightened due to continuing economic difficulties. Moreover, it is the explicit intention of DFP that the Bill will allow the **benefits under the current NICSC Scheme to be reduced**. The Explanatory and Financial Memorandum accompanying the Bill states:

> *The Bill will enable the Department of Finance and Personnel to reduce the amount of compensation payable to Northern Ireland Civil Service staff exiting on redundancy.*[30]

The explanation for this change is the intention of the Executive to maintain parity with the equivalent scheme for home civil servants: the compensation scheme for Home Civil Servants has already been made less generous.[31] A letter to the Prime Minister from the Minister for the Civil Service (Francis Maude) explains the UK Government's reasoning behind the reduction in benefits, which in the Minister's view were:

> *…way out of kilter both with the wider public sector and with the private sector. As a result there are very many surplus staff within the civil service who are being paid to do nothing because this is cheaper than making them redundant.*[32]

Another significant consideration is demographic change over the last four decades. Life expectation has increased for both males and females – see Table 2. As people live longer the cost of pensions provision (including top-up enhancements on retirement on medical grounds etc.) increases.

Table 2: UK life expectation at birth in 1972, 1994 and 2009[33]

	1972	1994	2009	Difference 2009 on 1972
Males	68.8	74.1	78.1	+9.3 years
Females	75.1	79.3	82.1	+7 years

2.3. Change to the current procedure? Issues for consideration

On 4 July 2012, CFP agreed that a draft amendment to the Bill should be prepared by staff. One possibility is to amend the Bill so that changes to the NICSC Scheme would be by the negative resolution procedure in the Assembly. This would mean that rather than DFP simply making an amendment and laying it before the Assembly, there would be the opportunity for MLAs individually or CFP collectively to 'pray against'[34] the legislative instrument. This would align the Assembly procedure for the NICSC Scheme with the other public service schemes under the 1972 Order.

It might be argued that this procedure would be a form of balancing measure following the removal by Clause 1 of the Bill of the trade union veto. It could allow for a safeguard in the event that CFP of the wider Assembly is concerned that the consultation process was flawed and/or agreement had not been reached. There would be an opportunity when CFP is

30 Explanatory and Financial memorandum to the Superannuation Bill, available online at: http://www.niassembly.gov.uk/Documents/Legislation/Bills/Executive%20Bills/Session-2011-12/supperanuation_efm.pdf (accessed 31 July 2012) (see page 4)

31 The broad issue of parity was discussed in some detail in section 4 of RaISe Bill Paper 59-12

32 Letter quoted in the judgment of Mr Justice McCombe in Case No: CO/2014/2011 between the Minister and the PCS union. 10 August 2011

33 Source: ONS health data, available online at: http://www.ons.gov.uk/ons/rel/social-trends-rd/social-trends/social-trends-41/health-data.xls (accessed 8 August 2012)

34 This is the mechanism by which a statutory rule might be subjected to annulment under the negative resolution procedure.

considering the subordinate legislation for trades unions or other interested parties to make representations.

On the other hand, it may be that the introduction of an Assembly procedural mechanism to changes to the NICSC Scheme gratuities would introduce uncertainty that might not be welcomed by one or other, or indeed, neither, party – staff side of management. Having said that, it is also arguable that because of the numbers of staff potentially affected by reductions or enhancements (and the associated impact on public finances) it is in the public interest for the Assembly to have a greater degree of oversight of amendments to the NICSC Scheme.

CFP may also wish to consider whether the change in wider context from the early 1970s has a significant bearing on its decisions in relation to any potential amendment to the Bill: does the intention to reduce benefits rather than enhance them mean that an Assembly control is appropriate in the current context? Conversely, it may also be arguable that greater Assembly control is more necessary if benefits were to be enhanced, given a potential risk for self-interest for management side.

Finally, CFP may wish to bear in mind that a NIPSA official stated in evidence in relation to Assembly procedure that:

> *…if there was some Committee scrutiny and some Assembly influence over it, I would not be overly confident that anything other than what DFP wanted would go through.*[35]

Having noted that the unions' position was that preferably the legislation should not be changed, another trade union witness stated that:

> *…if there were to be a change in legislation, there should be some sort of overseeing provision or accountability to DFP and the Assembly as a fallback position.*[36]

35 Official report, 27 March 2012, available online at: http://www.niassembly.gov.uk/Documents/Official-Reports/Finance_Personnel/Superannuation%20Bill%20Trade%20Union%20Briefing.pdf (accessed 31 July 2012) (see page 6)

36 Official report, 27 March 2012, available online at: http://www.niassembly.gov.uk/Documents/Official-Reports/Finance_Personnel/Superannuation%20Bill%20Trade%20Union%20Briefing.pdf (accessed 31 July 2012) (see page 7)

3. Parity in Northern Ireland public sector pensions

There are a number of public sector pension schemes in Northern Ireland for persons employed in the education and health sectors, local government and the police. This section of the paper presents information returned to RaISe by the departments responsible for the various schemes in relation to parity of provision with GB.

This information has been sought because it forms part of the wider context for the Bill. In the case of superannuation for civil servants, the Northern Ireland Executive's policy has been to pursue a policy of parity. This section shows that in the case of some public sector schemes, strict parity has not always been pursued.

3.1. The Principal Civil Service Pension Scheme

DFP has provided the following response:

> *Following consultation with the Departmental Solicitor's Office I can confirm there is no divergence between the Superannuation Act 1972 which applies in Great Britain and the Superannuation (NI) Order 1972 which, as you know, applies in Northern Ireland. Similarly there is no difference between the contributions and the benefits given under the civil service pension schemes of Great Britain and Northern Ireland.*
>
> *While there is a current divergence in the provisions of the Civil Service Compensation Scheme (Northern Ireland) from the equivalent scheme which operates in Great Britain, it is the intention of the Department of Finance and Personnel to amend the rules of the Northern Ireland scheme to restore parity with the Great Britain scheme when the currently proposed Superannuation Bill becomes law.*
>
> *Policy has never dictated a divergence from parity in relation to the Northern Ireland Civil Service pensions or compensation arrangements. By way of example, the Department of Finance and Personnel has brought 39 amendments to the Northern Ireland Civil Service pension and compensation arrangements since 2005 and the purpose of each has been to replicate in the Northern Ireland schemes amendments already made to the Great Britain equivalents without exception.*[37]

3.2. Northern Ireland Teachers' Pension Scheme (NITPS)

The Department of Education has provided the following response:

> *The provisions of NITPS, in the main, follow the principle of parity with the equivalent schemes in Scotland and in England & Wales. The are some minor differences brought about as a result of delays in implementing changes made in England & Wales, it is intended to bring the NITPS into line in due course. The only significant difference in the schemes, which we do not intend to bring into line with the other schemes, is in relation to the re-employment of retired teachers. In NITPS retired teachers who are re-employed cannot contribute to the pension scheme, whereas in Scotland and in England & Wales such teachers can contribute to the scheme.*[38]

37 Source: communication from DFP official

38 Source: communication from DE official

3.3. Criminal Justice

The Department of Justice has advised that:

> *…there is no legislative divergence from the principle of parity in respect of DOJ staff in the Core Department, Agencies or [Arms-length Bodies].*

The Department also noted that:

> *…there are a few equivalent bodies in England &Wales and NI e.g. the police. A number of our ALBs e.g. Office of the Police Ombudsman NI (OPONI), Police Rehabilitation & Retraining Trust (PRRT), Northern Ireland Police Federation (NIPF) etc, don't have full equivalents, so nothing can be deduced from the difference between pension provision in those bodies.*[39]

3.4. Health and Social Care (HSC)

The Department for Health, Social Services and Public Safety has advised that:

> *…there is no legislative divergence from the principle of parity in relation to the HSC Pension Scheme or superannuation provision. Pension provision for HSC staff in NI is equivalent to the pension provision provided to NHS staff in England, Wales and Scotland.*[40]

3.5. Local Government Pension Scheme

The Department of the Environment provided the following response, reproduced as Table 3 below.

Table 3: Comparison Local Government Pension Scheme (Northern Ireland) and the Local Government Pension Scheme (England & Wales) and the Local Government Pension Scheme (Scotland)

	England & Wales	Northern Ireland	Scotland
Vesting period (i.e. the period of service when members can get a refund on their contributions if they leave the scheme instead of having a small deferred pension in the scheme until retirement.)	3 months	3 months	2 years
Member contribution rate	Ranges from 5.5% to 7.5% according to which of the 7 salary bands the full-time equivalent salary falls into.	Same as England & Wales	Contribution rate derived from applying 5 contribution tiers (from 5.5% to 12%) to full-time equivalent salary.

39 Source: communication from DoJ official

40 Source: communication from DHSSPS official

	England & Wales	Northern Ireland	Scotland
Ill – Health	Minimum membership of 3 months for enhanced ill-health benefits. 3 tier arrangement. Tier 1 – if there is no reasonable prospect of the person undertaking gainful employment before normal retirement age (age 65), benefits are increased as if the member had retired at normal retirement age. Tier 2 – if there is a reasonable prospect that the person will be able to undertake gainful employment before normal retirement age, his benefits are increased by adding to his total membership at the date of ill-health retirement, 25% of the period between that date and the date on which he would have retired at normal retirement age (65). Tier 3 – if there is a reasonable prospect of the person being able to undertake gainful employment within 3 years, he may receive his pension with no actuarial reduction for early payment (i.e. payment before normal retirement age). Payment of benefits stops if the person takes up employment or after a maximum of 3 years. The decision to award an ill-health retirement is taken by the employer after consideration of the opinion of an independent registered medical practitioner.	Minimum membership of one year for enhanced ill-health benefits. 2 tier arrangement. Tiers 1 and 2 same as for England and Wales. The decision to award an ill-health retirement is taken by the Northern Ireland Local Government Officers' Superannuation Committee after consideration of the opinion of an independent registered medical practitioner.	Minimum membership of 2 years for enhanced benefits. 2 tier arrangement. Tiers 1 and 2 same as for England and Wales. The decision to award an ill-health retirement is taken by the employer after consideration of the opinion of an independent registered medical practitioner. Separately from the provisions of the Local Government Pension Scheme (Scotland) an employer can determine that a discretionary payment of an ill-health gratuity should be paid to an employee whose employment is terminated on the grounds of ill-health. The maximum ill-health gratuity payable to an employee is one week's pay for each whole year of employment with that employer up to a maximum of 30 weeks. This discretion is set out in the Local Government (Discretionary Payments and Injury Benefits) (Scotland) Regulations 1998.

	England & Wales	Northern Ireland	Scotland
Early Leavers: Business Efficiency and Redundancy	If aged 55 or over, immediate payment of retirement pension without actuarial reduction. Employer may increase the members' total membership by up to 10 years and/or award additional pension of up to £5,000 per year.	Same as England & Wales	Same as England & Wales except members of the scheme on 5 April 2006 can receive immediate payment of retirement pension from age 50.
Protections for members before 1 October 2006 from the removal of the 85 year rule. 85 year rule allowed members to retire early without actuarial reduction to the pension provided that their service plus age equalled 85.	Full protection up to 31 March 2016. Tapering protection from 1 April 2016 to 31 March 2020.	Same as England & Wales	For members before 1 December 2006, full protection up to 31 March 2020.

	England & Wales	Northern Ireland	Scotland
Employer's liabilities when leaving the pension scheme	Valuation of the pension assets and liabilities is required when a community admission body or transferee admission body is leaving the scheme.	Requirement for a valuation on leaving the scheme applies to all employers. Northern Ireland has unique provisions which allow any deficit, normally paid on an employer leaving the scheme, to be suspended for an agreed period. The employer continues to make the required employer contribution during the period of suspension. The regulations also allow liabilities to be apportioned amongst bodies. This was introduced as a response to the changes planned under the Review of Public Administration. It avoids a cessation payment having to be made when one (or more bodies) is being wound up but the successor body is joining the pension scheme.	Same as England & Wales

Early Termination of Employment – Discretionary Compensation Arrangements

(NOTE: These also apply to employees who are eligible to be members of the Local Government Pension Scheme as well as members.)

	England & Wales	Northern Ireland	Scotland
Termination of employment on grounds of business efficiency or redundancy.	Allows employers to increase the statutory redundancy payments as if there was no limit on amount of a week's pay used in the calculation. Also gives employers the discretion to pay up to 104 weeks pay (including statutory redundancy if applicable).	Same as for England & Wales	Similar provision to increase statutory redundancy payments. Subject to conditions, the employers can grant a credited period of up to 10 years to employers aged 55 or over. For employee who was a member of the Local Government Pension Scheme (Scotland) on 5 April 2006, the minimum age is 50. Payment is made in the form of a lumps sum (where applicable) and an annual amount.

4. Concluding remarks

In summary, this paper has raised a number of issues for consideration in relation to possible amendments to the Bill:

- Whether altering the Assembly procedure for changes to the NICSC Scheme would bring statutory provision for superannuation for civil servants more closely into line with that of other public sector schemes without introducing unwelcome uncertainty into DFP's consultation/negotiation;
- Whether the change in the wider context for the Bill from that which existed in the early 1970s is significant in deciding the appropriate Assembly procedure;
- Whether amending the Bill to require DFP to negotiate has the potential to create unforeseen difficulties; and,
- Whether a minimum period for consultation might provide a suitable alternative assurance.

The information presented in section 3 of the paper provides additional context in relation to the concept of 'parity'. While it seems that other public sector pensions schemes are broadly on terms with equivalents in GB, it appears that is has been possible to depart from strict parity on occasion in the past.

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