Northern Ireland Assembly

Committee for Finance

Report on a Legislative Consent Motion for the Public Service Pensions and Judicial Offices Bill

Together with the Minutes of Proceedings, Minutes of Evidence and Written Submissions Relating to the Report Ordered by the Committee for Finance to be published 6 October 2021

Mandate 2017-22

3rd Report NIA 126/17-22

Contents

Powers and Membership

Powers

The Committee for Finance is a statutory departmental committee established in accordance with paragraphs 8 and 9 of Strand One of the Belfast Agreement and under Assembly Standing Order No 48. The Committee has a scrutiny, policy development and consultation role with respect to the Department of Finance and has a role in the initiation of legislation.

The Committee has 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 relevant primary legislation;
- call for persons and papers;
- initiate enquiries and make reports; and
- consider and advise on matters brought to the Committee by the Minister of Finance.

Membership

The Committee has 9 members, including a Chairperson and Deputy Chairperson, and a quorum of five members. The membership of the Committee is as follows:

Dr Steve Aiken OBE (Chairperson)
Mr Keith Buchanan (Deputy Chairperson)[2]
Mr Jim Allister
Mr Pat Catney
Ms Jemma Dolan
Mr Philip McGuigan[1]
Mr Maolíosa McHugh
Mr Matthew O'Toole
Mr Jim Wells

[1] Mr Philip McGuigan replaced Mr Seán Lynch with effect from 5 October 2020

[2] Mr Keith Buchanan replaced Mr Paul Frew as Deputy Chairperson with effect from 15 June 2021

List of Abbreviations and Acronyms used in this Report

Full term	**Abbreviation / Acronym**
Legislative Consent Motion	LCM
Normal Pension Age	NPA
Northern Ireland Committee – Irish Congress of Trade Unions	NIC-ICTU
Northern Ireland Local Government Officers Superannuation Committee	NILGOSC
State Pension Age	SPA
United Kingdom Government	UKG

Executive Summary

The Committee considered a memorandum relating to a Legislative Consent Motion (LCM) which would extend the provisions of the Public Service Pensions and Judicial Offices Bill to include Northern Ireland. The LCM affects over 130k public sector workers in Northern Ireland and is designed to give effect to pension reforms following the McCloud (and Sargeant) judgement(s).

The Committee expressed considerable reservations in respect of the treatment of the McCloud remedy costs as member costs but noted particularly the confirmation, which the Bill is understood to provide, that no employee contributions will increase as a consequence of the remedy.

Notwithstanding the above, the Committee also expressed considerable concerns in respect of the anticipated revaluation of public service pensions and the as yet unquantified possibility of consequent increases in employee contributions to the relevant pension schemes. The Committee undertook to give further consideration to the important concerns raised by NIC-ICTU in respect of the revaluation process in due course.

The Committee noted and took some comfort from the assurances that the Department has provided in respect of: the treatment of subordinate legislation and technical documents; the provision of pension and financial advice to retirees; the administrative support for smaller pension schemes; and flexibilities in respect of additional contributions from deceased relatives.

The Committee agreed that owing to the shrinking timescales imposed by the UKG and the need to provide certainty to scheme members and the potential for any delay or deviation to lead to an unquantifiable financial and legal risk to the Executive, the Committee agreed that it had no option other than to support the Legislative Consent Motion or to at least not oppose it.

However, the Committee also agreed to write to the Minister seeking relevant assurances and asking him to lobby his counterparts in the UKG regarding the treatment of the costs associated with the McCloud remedy etc. and to write in similar terms to the sponsor of the Public Service Pensions and Judicial Offices Bill in Westminster in the hope of effecting relevant changes to the Bill.

Introduction

1. In order to address the rising liabilities associated with demographic changes, public sector pension schemes throughout the UK were reformed in 2015. These schemes generally were and continue to be defined benefit schemes. Prior to reform, most were final salary schemes. After the reforms, these generally became career average schemes where usually Normal Pension Age (NPA) for employees became linked to the later State Pension Age (SPA).

2. Although the consequence of this combination of changes was to successfully limit the increase in pension liability and thus the costs of providing public sector pensions, it has been argued that the balance of the reforms is detrimental for public sector pension scheme members – owing to the later retirement age and (often) increases in employee contributions. That said, the Hutton Commission found that the change to career average schemes would in fact be more beneficial for some low paid workers. In any event, the implications of all of these changes to public sector pensions are still being worked through e.g. most teachers currently retire at age 60; however the Department of Education's actuarial estimates show that this will change to age 65 over the next 20 years.

3. Many public sector pensions – with some exceptions e.g. the local government scheme NILGOSC – are generally unfunded. That is to say, unlike private sector schemes there is no pension fund into which employees pay, instead payments from employees and employers are made to the UK Government (UKG) who then calculate a liability and provide the associated pensions on an index linked (i.e. inflation proof) and defined benefit basis i.e. the value of the pension payment at retirement is known. The cost of providing public sector pensions in NI is around £1.3bn pa and includes payments to retired civil servants; health workers; teachers; fire fighters; PSNI officers and some other public sector workers including e.g. judges etc..

4. Private pensions schemes differ in that they have an actual pension fund and are also usually defined contribution schemes i.e. the value of the pension payment at retirement is not known until retirement. It is understood that the legislation in question makes no changes to either these schemes or indeed to the UK state pension scheme.

5. The 2015 public sector pension reforms were applied from 2012 and referred to public sector schemes only and included so-called transitional protections. These transitional protections covered employees who were within 10 years of retirement at NPA and allowed them to retain access to a final salary pension. These provisions also included so-called tapering protections – for employees who were between 10 and 14 years from NPA. Under these protections, these employees could stay in their existing schemes for a period ranging from a few months to several years after 2015.

6. These transitional protections became the subject of legal challenges in England. An Employment Tribunal found that the transitional provisions in the judicial pensions scheme treated younger judges less favourably than older judges and the UKG had failed to demonstrate how such treatment provided a proportionate means for achieving the stated legitimate aim of the pension reforms. In July 2019 and following further court action, the UKG accepted this decision and stated it would engage fully with the Employment Tribunal, to agree how the discriminatory effect of the judges' scheme could be remedied for younger judges who were not included in the provisions relating to transitional protections. It further explained that the discrimination identified in the court judgments in the cases of McCloud and Sargeant (a similar case taken by firefighters) would need to be addressed across all public sector pension schemes in England and Wales.

7. As the public sector schemes throughout the UK are largely identical, devolved administrations have moved to address the courts' rulings where these matters

are within their competence. In Northern Ireland, responsibility for public sector pensions is devolved and thus the Department considered legislation for Northern Ireland in order to address the court's ruling.

8. The remedy which is being put forward is to offer public sector pension scheme members who were not entitled to any transitional protections access to a legacy pension scheme for the period in question - 1 April 2015 to 31 March 2022 – where they had previously been moved to a reformed scheme. It appears that the reverse will also be true i.e. that where scheme members remained on a legacy scheme they will be given the opportunity of accruing benefits for the period in question from a reformed scheme. Thus where a different scheme offers greater benefits, scheme members may choose accordingly and thus realise those benefits.

9. Additionally, the remedy will require all public sector scheme members from 1 April 2022 to accrue future service benefits in the same way i.e. as a career average defined benefit and not as a final salary defined benefit.

10. Following a public consultation involving the public sector unions, the Department of Finance adopted an approach to the implementation of this change which is termed the so-call Deferred Choice Underpin (DCU) and which matches that adopted by the UKG. Under DCU, affected members of public sector pension schemes i.e. those contributing to these schemes from 1 April 2015 to 31 March 2022) will be asked to make a choice at retirement in respect of the treatment of the entitlements for the remedy period i.e. for those entitlements to be calculated on a final salary or career average basis.

11. It should also be noted that it is understood that the Department for Justice and the Department for Communities undertook consultations in respect of the related impact on judicial pension schemes and local government schemes respectively. It is further understood that the Department for Justice consulted

on other proposals relating to changes to judicial retirement ages and the development of a revised judicial pension scheme.

12. The Department of Finance advised that although the Executive could elect to deviate from the rest of the UK in respect of public sector pension matters, such a breach of parity would require the Executive to fund the difference in payments for the lifetime of the individuals affected and to devise and fund any associated additional administration. If the Executive adopted such an approach, it was also argued that it might leave itself liable to further court action which to-date has been directed at the UKG.

13. The Department also advised that the UKG timetable for the implementation of the so-called McCloud remedy was short. Legislation was required to be in place by 1 April 2022. Pension scheme administrators would then be required to determine the additional liability during the 2022-23 financial year with payments being made to scheme members from this time.

14. The Department argued that given the requirement to resolve this matter speedily; the limited time available in the present mandate; and the almost identical nature of the reform proposals and the existing legislation in Northern Ireland and England and Wales, a Legislative Consent Motion (LCM) to extend the provisions of the Public Service Pensions and Judicial Offices Bill to Northern Ireland was the most appropriate approach. The LCM would thus permit the UKG to legislate on these matters on behalf of the Northern Ireland Assembly. It is understood that the Executive agreed to this, in principle.

15. Consequently, the Department laid a memorandum in the Business Office on 6 September 2021 indicating that the Minister intended to put down a LCM relating to Public Service Pensions and Judicial Offices Bill. The associated memorandum was referred to the Committee for Finance for its consideration.

16. It should be noted that in addition to the public sector pensions arrangements discussed above, the Bill will make provisions for raising the mandatory retirement age of devolved judicial office holders from 70 to 75 and will also make provision for judges sitting in retirement.

17. Furthermore, the Bill will also make changes to local government pensions which appear to be largely in line with the transitional protections measures discussed above.

Committee Approach

18. The Committee took oral Departmental evidence on matters relating to pension reform on 4 November 2020 and 10 March 2021. The Committee also took oral evidence from the Northern Ireland Committee of the Irish Congress of Trade Unions (NIC-ICTU) on 21 April 2021.

19. Following the laying of the relevant memorandum and owing to the constrained timescales – the Committee is expected to take evidence and develop its report within 15 working days - the Committee agreed to take a limited number of additional oral briefings as follows:
    - Assembly Research – 22 September 2021;
    - NIC-ICTU – 22 September 2021;
    - Department of Finance – 22 September 2021

20. The Committee also sought the views of relevant statutory committees of the Northern Ireland Assembly.

21. The Committee considered a draft of this report at its meetings of 6 October 2021 and ordered that the report should be published.

22. Minutes of Proceedings are at Appendix 1. The Minutes of Evidence of the oral evidence sessions are included at Appendix 2. Written submissions are

included at Appendix 3. Departmental papers are at Appendix 4. The relevant Assembly Research paper is included at Appendix 5.

Acknowledgements

23. The Committee wishes to record its thanks to all those who gave written and oral evidence often at very short notice.

Key Findings

LCM approach

24. The Committee noted the significant body of public sector pension reform legislation and legal rulings which underpin the McCloud remedy. The Committee noted also that both existing Northern Ireland pensions legislation and the preferred solution which the Department is to adopt in respect of public sector pensions reform in Northern Ireland almost exactly matches the rest of the UK.

25. The Committee accepted the importance of speedily actioning payments to public sector pension scheme members and noted the consequent requirement to generally adhere to the UKG timetable in respect of the so-called McCloud remedy. The Committee also accepted that owing to a combination of the constraints imposed by the pandemic and the shortened mandate that Committee time and plenary capacity was limited and that consequently the drafting and scheduling of Northern Ireland legislation prior to the end of the current mandate would be challenging, to say the least. Members therefore understood the logic of the Department’s argument in respect of seeking a LCM in order to extend the provisions of the Public Service Pensions and Judicial Offices Bill to Northern Ireland.

26. Members also considered the wider context of the ongoing revaluation of public sector pensions which had been paused owing to uncertainty relating to the

McCloud judgement. Given the substantial costs associated with the McCloud remedy (which are estimated as £97m pa i.e. £700m in total) and the wider issues relating to the revaluation of public sector pensions (which it is understood may generate further legal proceedings), some Members suggested that the Assembly might pause the legislative process and seek to pass devolved legislation for these important devolved matters **only** when **all** of the costs and the legal position is clarified.

27. The Department advised that as there was no guarantee in respect of the timing of the relevant legal processes, pausing the process would leave Northern Ireland public sector pension scheme members deprived of certainty in respect of the McCloud remedy payments for some time. It was further suggested that if the UKG was obliged to subsequently alter provisions owing to legal action, then the Executive could simply follow suit without exposing itself to unquantifiable legal risk.

28. It was also argued that if the Executive deviated from the rest of the UK in respect of the payment of public sector pensions, such a deviation could amount to an expensive, unlimited and long-term liability of unknown quantum. It was argued that such a liability would inappropriately divert much-needed Northern Ireland block funding and would leave the Executive subject to other legal challenges which may prove to be lengthy and expensive and which so far had been directed solely at the UKG. The Department appeared to argue that in order to comply with the UKG timetable and thus provide certainty for public sector pension scheme members, there was no alternative but to support the LCM.

29. NIC-ICTU had suggested in evidence that the passage of the LCM would automatically require all subordinate legislation and technical documents to be scrutinised at Westminster and not at the Assembly. The Department provided an assurance that this was not the case and that all subordinate legislation and

technical documents would come to the Assembly for public scrutiny. Members took considerable comfort from this assurance.

Funding the costs

30. The Department advised that the interim revaluation of some public sector pension schemes had seemed to generated unexpected benefits. This was owing to members performing differently from the relevant actuarial projections. In other circumstances, all members of the pension scheme might have been expected to gain from this. However, it is understood that largely all of these benefits will be redirected to meet the costs of the McCloud remedy which will likely benefit many but certainly not all scheme members. NIC-ICTU had suggested that this is unfair and effectively makes scheme members pay for the McCloud remedy.

31. The Department responded that the benefits from the interim revaluation may not be accurately calculated and had in fact suggested in some cases that there were cost floor breaches. This is understood to be a reference to the PSNI and firefighter pension schemes which generated unexpectedly high costs and would thus be ordinarily expected to require additional member contributions. The Department indicated that the Bill guarantees that in these cases there will be no increase in contributions to meet the remedy costs. The Department further contended that all of these pension changes are member costs and that as members had paid for the initial reforms, it wasn't fair to ask anyone other than scheme members (including the UK Government) to pay for public sector pensions.

32. Members expressed some sympathy for the argument that the costs associated with the McCloud remedy should be met by the UKG, as the courts had found that the original protections were discriminatory and that thus it was for the UKG to make the associated reparations. However, the Department argued that the original reforms were funded by additional employee contributions as they related to the costs of the scheme and thus these additional costs would also

have to be met from scheme benefits. The Committee noted that if the Executive adopted a different approach to the funding of these reparations, then this would be have to be met from the NI block as the UKG was highly unlikely to fund a different and more beneficial solution for Northern Ireland while requiring equivalent schemes in GB to carry the costs themselves.

Administration and other costs

33. NIC-ICTU and the Department referred to a number of issues arising from the administration and other costs of the McCloud remedy including: the determination of entitlements; the provision of financial advice to retirees; the treatment of interest payments for additional contributions; and the treatment of contributions in respect of deceased scheme members.

34. The Committee noted that the McCloud remedy would affect a very large number of pension members some of whom are members of relatively small schemes. The calculation of change to entitlement may be complex and may be beyond the administrative capabilities of some scheme particularly given the tight timescale. The Committee therefore sought and received limited assurances from the Department that support would be provided to public sector pension scheme administrators in order to help them review and determine the entitlements and additional payments etc. for scheme members within the UKG timetable.

35. The Committee noted that the McCloud remedy will generate changes to many pension statements which may lead to confusion and anxiety among scheme members especially when they come to decide whether they wish to select a legacy or reformed scheme entitlement under the DCU arrangements. The Committee suggested that the Department should seek advice on best practice from the Pensions Regulator.

36. The Committee noted that where scheme members choose a reformed scheme in preference to a legacy scheme, this may require them to make additional

contributions covering the relevant period. The Committee further noted with some surprise that this may require the payment of interest on these additional payments by the employee at a rate which was to be determined. The Committee noted that in cases of hardship the payments and the interest can be waived. However, the Committee agreed to write to the Minister asking him to provide further assurances in this regard and to lobby his Westminster counterparts in order to do away with the relevant interest payments.

37. The Committee also noted that where scheme members are deceased, their relevant surviving family members can choose either a reformed or legacy scheme benefits for the period in question. The Committee noted that associated additional payments can be waived where it is adjudged that these would lead to hardship. The Committee again agreed to write to the Minister asking him to provide further assurances in this regard and to lobby his Westminster counterparts in order to do away with the relevant payments.

38. The Committee also noted reported difficulties associated with pensions for firefighters and PSNI officers in terms of their length of service and different levels of contributions between legacy and reformed schemes. The Committee noted Departmental assurances indicating that further consideration would be given to the fair resolution of these issues.

39. The Committee noted with interest feedback from other statutory committees in particular from the Committee for Justice regarding the judicial offices aspects of the Bill and from the Committee for Communities in respect of local government employees. In both cases, the statutory committees indicated their support in principle for the LCM.

Conclusion

40. The Committee felt that the UKG's insistence that the McCloud remedy costs were member costs was clearly not correct. The Committee also agreed that it was likely that the McCloud remedy (which is to benefit many but not all scheme

members) would likely generate further legal challenges. However, Members noted particularly the confirmation, which the Bill is understood to provide, that no employee contributions will increase and therefore agreed to reluctantly accept this aspect of the legislation.

41. Notwithstanding the above, the Committee also expressed considerable reservations in respect of the anticipated revaluation of public service pensions and the as yet unquantified possibility of consequent increases in employee contributions to the relevant pension schemes. While the Committee noted the Department's explanation that revaluation is a work in progress and that it differed from the McCloud remedy, the Committee undertook to give further consideration to the important concerns raised by NIC-ICTU in respect of the revaluation process in due course.

42. The Committee noted and took some comfort from the assurances that the Department has provided in respect of: the treatment of subordinate legislation and technical documents; the provision of pension and financial advice to retirees; the administrative support for smaller pension schemes; the flexibilities in respect of additional contributions from deceased relatives.

43. Members felt that the process of Assembly scrutiny of these important matters will always be better served by devolved legislation and judicious scrutiny by the Committee for Finance. However, owing to the shrinking timescales imposed by the UKG and the need to provide certainty to scheme members and the potential for any delay or deviation to lead to an unquantifiable financial and legal risk to the Executive, the Committee agreed that it had no option other than to support the Legislative Consent Motion or to at least not oppose it.

44. However, the Committee also agreed to write to the Minister in respect of the assurances detailed above and asking him to lobby his counterparts in the UKG regarding the treatment of the costs associated with the McCloud remedy etc. and to write in similar terms to the sponsor of the Public Service Pensions and

Judicial Offices Bill in Westminster in the hope of effecting relevant changes to the Bill.

45. Further to the delivery of the relevant Departmental assurances, the Committee also undertook to consider in detail the relevant secondary legislation and technical documentation when it is brought forward.

Appendices

List of Appendices

Appendix 1 - Minutes of Proceedings (extracts)

- 4 November 2020
- 10 March 2021
- 21 April 2021
- 15 September 2021
- 22 September 2021
- 29 September 2021
- 6 October 2021

Appendix 2 – Minutes of Evidence

- 4 November 2020 – Department of Finance
- 10 March 2021 – Department of Finance
- 21 April 2021 – Irish Congress of Trade Unions briefing (NIC-ICTU)
- 22 September 2021 – Department of Finance
- 22 September 2021 - Trade Unions briefing

Appendix 3 – Written Submissions

- Northern Ireland Committee of the Irish Congress of Trade Unions and the Central Consultative Working Group (TUS)
- Committee for Communities
- Community Trade Union Pension Challenge Administration Team
- Committee for Justice

Appendix 4 – Memoranda and Papers from the Department of Finance

- **21 October 2020 -** Department of Finance paper on Changes to the Transitional Arrangements to the 2015 Schemes
- **3 March 2021 –** Department of Finance paper on Changes to the Transitional Arrangements to the 2015 Schemes Consultation outcome
- **6 September 2021 –** Department of Finance paper on Legislative Consent Motion (LCM) for the Public Service Pensions and Judicial Offices Bill

- **6 September 2021 -** Legislative Consent Motion for the Public Service Pensions and Judicial Offices Bill
- **28 September 2021 -** Department of Finance submission to Minister with letter of reply to Committee

Appendix 5 – Research Papers

Public Service Pension Reform: Key Preliminary Considerations
NIAR 61-2021