Briefing note

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Public Service Pensions Bill
Written evidence to Committee for Finance and Personnel

The British Medical Association (BMA) is an independent trade union and voluntary professional association which represents doctors from all branches of medicine all over the UK. It has a total membership of over 150,000 in the UK and represents 70% of the medical profession here in Northern Ireland.

Executive summary

- The BMA has grave concerns about the Northern Ireland Executive's approach to public sector pension reform, and particularly the unfair way in which the NHS Pension Scheme is being treated. These concerns have been deepened by publication of the Public Service Pensions Bill in Northern Ireland. The legislation risks entrenching disparities across and within the different public sector schemes.

- Stronger amendments to the Bill are necessary to curtail new sweeping powers that would allow successive Executives to make unilateral and retrospective changes to accrued benefits in public sector pension schemes, utterly undermining the 'settlement for a generation' as promised by the UK Government.[i]

- The NI Executive must give assurances that the arrangements for schemes will be robust and that the proposed arrangements will meet the requirements for effective governance of the NHS Pension Scheme with continued input from staff representatives.

- The Department of Finance and Personnel's control over valuations and over the employer cost cap must be tempered with requirements to consult more widely.

- The NI Executive should commit to adopting a fairer approach in the new Career Average Revalued Earnings (CARE) scheme system by ensuring that subsequent regulations prescribe a much flatter structure for the NHS scheme contribution.

- Amendments to the Bill are needed to allow the *Working Longer Review* to report before there is a final legislative change to tie the normal pension age to the state pension age.

Introduction

1. The BMA has been deeply concerned about the UK Government and subsequently, the NI Executive's approach to public sector pension reform from the outset, and particularly the unfair way in which the NHS Pension Scheme is being treated.[ii]

2. While we believe the aim of creating a common legislative framework for all public sector pensions is sensible[iii], this Bill actually goes much further. It also serves to highlight the disparities across and within the different schemes and to some extent, embed them for the future.[iv]

3. The BMA accepts that the NHS Pension Scheme must offer a fair deal for taxpayers as well as to staff. Many NHS employees have already been subject to a three year pay freeze and dealing with the combined effects of major funding pressures and structural reforms. The BMA strongly believes that there is no justification for the scale of the planned changes to public sector pensions or the speed at which they are to be implemented.

Inappropriate delegation of legislative powers

4. Clause 3 of the Bill grants the NI Executive wide and retrospective powers for further radical public sector pension changes adversely affecting public sector employees' pensions. This undermines the UK Government's claim that this round of pension reform would be a 'settlement for a generation'.[v] It is generally accepted that public sector pensions represent an element of deferred public sector pay.

5. During the legislative stages of the Westminster legislation, the UK Government recognised that there were strong concerns about the wide scope of powers. The UK Government acknowledged these and introduced what it believed to be better safeguards. The initial text of the Westminster Bill technically could have permitted unrestricted powers to amend primary legislation but the final Westminster Act now says such powers would be limited to only making 'consequential' changes or to achieve 'consistency'. There is also a 'consent lock' for any retrospective changes to pensions that have 'significant adverse effects on members'. This means members of pension schemes or their representatives would have to agree to such changes.[vi]

6. Although the changes made to the Westminster legislation – now reflected in the NI legislation – signalled some positive movement, these are not enough as changes can still be made retrospectively and they may not necessarily be only consequential. Ideally, there should be further changes to the Bill to protect public sector pension promises and prevent costly future legal challenges.

Scheme governance

7. The Bill specifies in Clauses 4 to 6 that each of the schemes must have a scheme manager and a pension board which must ensure compliance with the requirements of the Pensions Regulator for the first time.

8. The arrangements for schemes need to be robust and the NI Executive must provide assurances that the proposed arrangements will meet the requirements for effective governance of the NHS Pension Scheme with continued input from staff representatives.

DFP control over valuations

9. Under Clause 11, scheme valuations will be conducted through direction from the Department of Finance & Personnel (DFP), with DFP determining the method, data and assumptions to be used and ultimately the contribution rate. Valuations may cover both the existing schemes and the new schemes established in the Bill.

10. The BMA believes that giving DFP wide powers to impose what data and assumptions are to be used in valuations and how a valuation is to be undertaken needs to be tempered with a requirement to consult wider than the Government Actuary.

DFP control over the employer cost cap

11. According to Clause 12, the employer cost cap will be set in accordance with direction from DFP. The employer cost cap will be a rate used to measure the costs of a scheme. DFP will have powers to specify how the cap will operate in terms of specifying margins either side of the cap and the margin of adjustment required if costs exceed those margins. Regulations will determine the process if a cost adjustment is required and a default mechanism to ensure an adjustment is made.

12. We believe that regulations on the employer cost cap must be fully consulted on and subject to the affirmative procedure.

Career Average Revalued Earnings Scheme (CARE)

13. The Bill gives powers to establish different types of schemes (including defined benefit and defined contribution schemes), with the exception of a final salary scheme which is specifically excluded. There will be a switch to a new CARE scheme for all NHS staff in 2015. For hospital doctors, this means the end of the final salary scheme, resulting in around a 30 per cent reduction in value on a like-for-like basis.[vii]

14. As part of reforms to the NHS Pension Scheme in 2008, health unions agreed to the introduction of a multi-tiered employee contribution structure. This was to reflect the fact that higher earners had previously received proportionately more benefit than lower earners from final salary arrangements for every £1 of employee contributions paid. The level of tiering is now set to increase dramatically by 2014-15, with higher earners within the NHS scheme paying significantly greater proportions of their salaries for their pensions than lower earners – even though the final salary link which benefited higher earners more has been broken.

15. For higher earning NHS staff, this unfairness is even more marked as the NHS scheme in general compares unfavourably to other public sector schemes for many staff. For example, many doctors will have to pay twice as much as a civil servant on a similar salary to receive a similar pension. The new tiering structure means that the cost of accruing pension benefits (even after income tax relief is taken into account) will vary for individual NHS staff members who join the NHS scheme after the CARE scheme is introduced.

16. The BMA accepts the general principle that the lowest paid staff should be encouraged by scheme design to join the pension scheme. It also accepts that tiering to recognise higher rate tax relief is appropriate within a CARE system. However, the steep tiering is completely unjustified in a CARE scheme.

17. The NI Executive must provide assurances that it will adopt a fairer and equitable approach in a new CARE scheme system by ensuring that subsequent regulations prescribe a much flatter structure for the NHS scheme contribution.

Linking state and normal pension ages

18. The Bill links normal pension age for public sector pensions to state pension age, which is rising to 68 by 2046. This applies to all public sector workers except for firefighters, police and the armed forces, where the normal pension age will remain 60. The *Working Longer Review* of the planned increase in the normal pension age for staff in the NHS Pension Scheme to 68, is currently being undertaken jointly by the UK Government, employers and health unions.

19. The *Review* should be allowed to make genuinely evidence-based recommendations as to whether all or some frontline NHS staff have roles that are particularly physically, mentally and/or emotionally demanding and so should have their normal pension age capped at a lower age.

20. The review was a key component of the scheme specific discussions between the UK Government and trade unions which appears to have been ignored by this clause. Furthermore, in the final report of the Independent Public Service Pensions Commission, recommendation 11 states that *'…The link between the State Pension Age and Normal Pension Age should be regularly reviewed, to make sure it is still appropriate…'* As written, the Bill does not currently allow for this.

21. The Bill should be amended to allow the *Review* to report before there is a final legislative change to tie the normal pension age to the state pension age.

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References

[i] HM Treasury, 13 September 2012. Available at: http://www.hm-treasury.gov.uk/press_81_12.htm

[ii] The BMA has always accepted that the NHS Pension Scheme must offer a fair deal to taxpayers as well as to NHS staff but the BMA believes there is no justification for the scale of the planned changes or the speed at which they are to be implemented. In 2008, NHS staff agreed to major changes to the NHS scheme to make it sustainable in the long term. This involved a large increase in employee contributions and the introduction of tiered contributions to protect lower paid workers. It also meant an increase in the pension age for new entrants (to 65). The BMA engaged very constructively with the UK Government and employers to reach agreement on these reforms, which for many senior doctors resulted in a 42% increase to pension contributions. Costs to taxpayers were reduced and controlled, with mechanisms in place to make the NHS Pension Scheme sustainable for the future, including agreement that any unforeseen increase in costs due to improved longevity would be met by members. The terms agreed for the NHS Pension Scheme were envisaged by all parties as a long-term deal, and not one that would be abandoned by the UK Government just four years later.

[iii] The Bill provides a common legislative framework for all public sector pension schemes following recommendation from Lord Hutton in the final report of the Independent Public Service Pensions Commission. Several public sector schemes are captured within the Bill, including the NHS Pension Scheme. Independent Public Service Pensions Commission: Final Report, 10 March 2011. Available at: http://cdn.hm-treasury.gov.uk/hutton_final_100311.pdf

[iv] BMA (2012) Public sector pension reform: challenging unfairness. Available at: http://www.bma.org.uk/working-for-change/negotiating-for-the-profession/pensions-unfairness

[v] HM Treasury, 13 September 2012. Available at: http://www.hm-treasury.gov.uk/press_81_12.htm

[vi] See section 3 and section 23 of the Public Service Pensions Act 2013. Available at: http://www.legislation.gov.uk/ukpga/2013/25/pdfs/ukpga_20130025_en.pdf

[vii] GPs already have a CARE scheme but they will also see their contributions rise very significantly and will have to work to 68.