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Public Service Pensions Act – Consideration of Westminster Legislative Process

This paper seeks to inform the Committee for Finance and Personnel's consideration of the Public Service Pensions Bill (the current NI Bill). It outlines key findings of a review that was undertaken by the Research and Information Service to ascertain whether issues raised by stakeholders in Northern Ireland about the current NI Bill also arose during deliberations about similar public pensions reform legislation considered and then enacted in Westminster from October 2012 to April 2013. The paper further explains how similarly raised issues were resolved, noting the given legislative provisions that were enacted.

1 Introduction

This paper considers key issues that have been identified in stakeholders' written responses received by the Committee for Finance and Personnel (CFP) during the committee consideration stage of the Public Service Pensions Bill (the current NI Bill). It seeks to inform the CFP's consideration by reviewing the passage and enactment of similar public sector pensions reform legislation in Westminster throughout 2012-13, and explaining how similarly raised issues were resolved, noting the given legislative provisions that were enacted.

Firstly, this paper reviews the stakeholder responses received by CFP to highlight key issues they have identified. This can be found in Section 2.

Thereafter the paper tracks Westminster's consideration of similar legislation to see if and how similar issues arose, and if so, what the outcomes were for these issues. These can be found in Section 3.

Finally, a short conclusion is offered in Section 4.

2 Evidence Submitted to CFP

During committee consideration of the current NI Bill, the CFP has received written responses from the following stakeholders:

- British Medical Association (BMA);
- Northern Ireland Human Rights Commission (NIHRC);
- National Association of Schoolmasters Union of Women Teachers (NASUWT);
- Fire Brigades Union (FBU);
- Northern Ireland Public Service Alliance (NIPSA);
- Northern Ireland Local Government Association (NILGA); and,
- Northern Ireland Committee – Irish Congress of Trade Unions (NIC-ICTU).

A review of these responses reveals that the key issues identified can be grouped into the following categories; and for ease of reference, the relevant stakeholders are noted:

- **The Nature and Necessity of the Reform** – A number of the responses question the fundamental justifications for, and the nature of, the reforms outlined in the current NI Bill. This issue is raised with the response from NIPSA, BMA, and NASUWT. Such points are related to the principles that public service pensions should be adequate and fair, as well as affordable and sustainable.

- **Reform of the Normal Pension Age (NPA)** - These issues are raised within the responses from NIPSA, FBU and BMA. This is related primarily to the principle that public service pensions should be adequate and fair.
- **Concentration of Powers in Department of Finance and Personnel (DFP)** – These concerns centre around the provisions in the current NI Bill that – if enacted – would allow for the use of negative resolution to pass future amendments. These points are raised in the submissions made by NASUWT and BMA. They are related to the principles that public service pensions should be adequate and fair, as well as transparent and simple.
- **Respect for Accrued Rights** – The submissions made by NIHRC, NASUWT and SMA consider the implications of the current NI Bill for pension scheme members’ accrued rights. The relevant key principles concerned are that public service pensions should be adequate and fair, as well as transparent and simple.
- **Equality** – The submission made by NASUWT raises issues concerning the impacts of the current NI Bill in terms of equality. The related principle is that public service pensions should be adequate and fair.

Each above-stated category is addressed in the following section.

3 Similar Issues Identified During the Westminster Legislative Process

This section uses sub-sections to examine if and how the issues noted above arose in Westminster during the passage of similar legislation, and if so, what the outcomes were for these issues. For ease of reference, also included in this section is discussion about the issues in the Northern Ireland context, highlighting potential issues for CFP’s consideration about the current NI Bill.

At the outset, it should be noted that the Westminster legislative process did not significantly amend the terms of the Public Service Pensions Bill (the Westminster Bill), and was enacted as the *Public Service Pensions Act (2013 Act)*. More specifically, during the House of Commons Committee Stage, no Opposition amendments were accepted. Of the amendments which were made to the Westminster Bill, “most were either “minor and technical” or clarified how provisions were intended to work”.¹ And during the House of Lords’ stages, all amendments made to the Westminster Bill:

...were in the name of the Government Minister, except for two related to pension age for the members of the Defence Fire and Rescue Service and Ministry of Defence (MoD) Police, which were opposed by the Government. The House of Commons voted to reject these amendments on 22 April 2013. However, the Government subsequently accepted an opposition

¹ Djuna Thurley, Public Service Pensions Bill: Committee Stage Report, House of Commons Library, Research paper 12/72. 29 November 2012

amendment to require a review of the effect of the Bill on the MoD fire and police services...²

3.1 The Nature and Necessity of the Reform

A number of the responses received by CFP outline a general opposition to the current public service pension reform process. Such responses argue that the reforms are not necessary at present; and that they do not meet the principles of public service pension reform, as set out by the Independent Public Service Pension Commission (IPSPC).

For example, the BMA response to CFP, reported that:

The BMA accepts that the NHS Pension Scheme must offer a fair deal for taxpayers as well as 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.³

NASUWT's response argues that the alleged underlying principle of the Bill that public sector pensions are unaffordable is "spurious".⁴ They believe that the necessary level of public service pension reform has already been achieved in previous reforms of public service pensions over the last decade.

The Westminster Government's position is that the IPSPC Reports in 2010 and 2011 made clear that reform of public service pensions are essential. They argue their reforms are consistent with the findings and recommendations made by the IPSPC. During the Westminster legislative process, the Opposition also made clear their acceptance that public service pensions required reform, and that the IPSPC recommendations provided a sound basis for doing so. Their criticisms generally arose where they found that there were deviances from the approach as taken in the Westminster Bill, and the recommendations of the IPSPC. They did not oppose the fundamental principles of the reform.

The enactment of the *2013 Act* in Westminster thus created a legislative framework for Northern Ireland to rely on when considering its pensions reform. Whilst the Assembly has legislative competence to adopt its own arrangements for the public service pensions covered by the current NI Bill, the prevailing devolution arrangements – specifically the financial framework, including parity - would make Northern Ireland responsible for costs arising from legislative departures from the Westminster Act. For example, the cost of a failure to implement the *2013 Act* in its entirety is estimated by

² Djuna Thurley, Public Service Pensions Bill – Lords' stages, House of Commons Library, Standard Note SN6572, 29 April 2013

³ BMA letter to CFP, dated 30 August 2013

⁴ NASUWT letter to CFP, dated 30 August 2013

the Department of Finance and Personnel at £300m per year.⁵ Whilst unions have challenged the accuracy of this figure⁶, at present there are no alternative valuations. Even if there were, the fundamental point remains that failure to implement the reforms in full would result in a reduction to the block grant, given the existing financial framework for devolution. This is a significant issue for consideration by CFP.

3.2 Reform of the Normal Pension Age

The current NI Bill links the Normal Pension Age (NPA) to the State Pension Age (SPA) for all public service pension schemes. The only exceptions to this in Northern Ireland are the schemes for the police and for firefighters, where the NPA will be set at 60.

The main justification for this reform is that schemes must reflect the increasing longevity of former members.

This aspect of the reform package has been particularly controversial, and has provoked criticism in Westminster and Northern Ireland. The main criticisms have been:

- The special provision for firefighters is insufficient;
- That special provision should be made for further categories of public service employees who work in physically demanding roles; and,
- The current NI Bill should include provisions related to future changes to the SPA

3.2.1 Insufficient special provision for firefighters

The FBU's response to CFP relies on research, which they say supports the FBU's view that an NPA of 60 for firefighters is not workable. They suggest that the current NI Bill should be amended to allow flexibility within scheme regulations for the specifying of an NPA below 60.⁷

This echoes arguments raised by the FBU and the Opposition during the legislative process at Westminster for the *2013 Act*. In the House of Lords, the Opposition argued that the Williams Review provides "medical evidence that working beyond 55 is not attainable by most current firefighters"⁸. The Government, refusing to consider extra measures, argued:

⁵ DFP letter to CFP, dated 21 June 2013

⁶ For example, during the ICTU presentation to CFP on 09 October 2013.

⁷ FBU letter to CFP, dated 30 August 2013

⁸ HL Deb, 12 February 2013, c606

We are not, and nor should we be, in the business of reducing pension ages given the longevity challenges we face. To do so would go against all that the Bill is designed to achieve...

The [Williams] report projects that in circumstances where people maintain their physical activity levels and BMI, individuals could maintain operational fitness in many cases until their mid-60s. We simply do not believe that it is necessary to make an amendment which enables a lower pension age than 60 for members of the firefighters' scheme, or for the police and armed forces schemes.⁹

CFP may be interested in investigating the desirability or potential for breaking parity with the 2013 Act on this provision, by considering the amendment proposed by the FBU.

3.2.2 Special NPA provision for further categories of employee

The BMA's response to CFP notes that the Westminster Act has pre-empted the work of the *Working Longer Review*, which is currently undertaken by the United Kingdom Government, employers and health unions to investigate the planned increase of the NPA to 68 in 2046. As a result, the BMA see the 2013 Act, and the current NI Bill, as ignoring this process. As a consequence, evidence-based recommendations as to whether certain physically, emotionally or mentally demanding roles in the health services should have a lower NPA will be ignored.¹⁰

This critique echoes similar criticism made from across the public sector, and by the Opposition, throughout the Westminster process. For example, during the Second Reading of the 2013 Act, a member of the Opposition asked:

The Chief Secretary talks about longevity, but what does he think the proposals will mean for the longevity of a mental health nurse who is 67 and a half years old, goes to work every day and ends up literally fighting with patients?¹¹

The Government's position throughout the Westminster legislative process was that no further concessions could be made in relation to reducing the NPA for particular categories of employee. During the House of Commons Public Bill Committee stage, the Opposition proposed an amendment to allow additional categories or worker to be exempt from the SPA link. This proposal was defeated by a vote in the Committee, with the Government arguing:

⁹ HL Deb, 12 February 2013, c606

¹⁰ BMA letter to CFP, dated 30 August 2013

¹¹ Second Stage Readings, 29 October 2012, c59

The Independent Commission was clear that the work of police, firefighters and the armed forces is unique and that that should be reflected in their normal pension ages...

*The Government commend the work and commitment of all the diverse work forces that make up the public service, but it is important to aim for consistency and commonality, unless there is a compelling reason to the contrary. The Government are confident that the pension age provisions are correct and therefore, **do not see the need to exempt any further members from the state age link as a result of future undefined capability reviews.**¹²*

The Opposition also raised the working of the on-going NHS Working Longer Review. They asked what would be the result if this review recommended a different retirement age for certain staff categories – would there be a legislative means to reflect this in relation to the *2013 Act*? The Government responded:

*The review was considering the implications of working longer for NHS staff, not the SPA link.*¹³

The Government appear correct in this assertion, in that the terms of reference for the Working Longer Review require it to consider three areas:

- Evidence of the impact of working beyond 60;
- Good employment practice and developing career pathways; and,
- Consider links between scheme flexibilities and the concept of total reward.¹⁴

However, there remains a question as to what will happen should the review find there to be significant detrimental effects upon particular employees who work beyond the age of 60. The Government's response does not add any clarity to this issue. Despite the Government's assertions that there are no further categories of public service employee, outside those specified in the *2013 Act*, the problem of the consequences of an increase in the NPA for employees with physically demanding jobs across the public services remain.

The Government's main response to this has been to point out that the NPA is not the age to which someone is obliged to work to. Rather, it is the age at which one is entitled to receive their full value pension. The Government pointed out:

*Clearly, if people wish to retire earlier, they can do so and take an actuarially reduced pension or, indeed, retire later and take an actuarially enhanced pension.*¹⁵

¹² HL Deb, 13 November 2013, c327

¹³ Djuna Thurley, Public Service Pensions Bill: Committee Stage Report, House of Commons Library, Research paper 12/72. 29 November 2012, p17

¹⁴ Working Longer Review Terms of Reference:

<http://www.nhsemployers.org/SiteCollectionDocuments/Working%20longer%20review%20-%20initial%20terms%20of%20reference.pdf>

This option does not appear entirely satisfactory. It ignores the situation where workers, who do not wish, or cannot afford, to take early retirement, but find the completion of their duties impossible due to age-related decline. The only other suggested possible resolution to emerge from the Westminster process, is found in comments made in the Commons Public Bill Committee evidence session by a representative from the Pensions Policy Institute:

People may have to retrain and perhaps work in more of a back-office environment, rather than being at the front line...my general point is that if you have trained as a teacher, you have a set of skills and there are probably other jobs out there. It might not just be about front-line teachings...we just need to be more flexible about that and recognise the skills that older people have.¹⁶

Whilst this may be the most likely work-around for employees nearing their NPA in the future, at this stage it is unclear how anything like this would work in practice, and appears that it will represent a significant challenge to employers and to Government.

CFP may wish to consider whether there is any merit in a fuller investigation of the types of jobs affected by this problem, and the organisational, societal, and financial implications associated with it.

3.2.3 Arrangements for future changes of the State Pension Age

Two main issues have been raised in both Northern Ireland and Westminster around the future arrangements for changes to the SPA. The first is that the current NI Bill does not make provision for the regular review of the link between the SPA and the NPA, as raised in the BMA's submission to the CFP.¹⁷ This criticism was also voiced throughout the Westminster legislative process. There it was linked to further recommendations that it would be desirable that arrangements be put in place to manage the future changes to the SPA.

During the Second Reading in the Commons the Shadow Chief Secretary to the Treasury argued:

When Lord Turner carried out the review of state pensions for the previous Government, he recommended a 15-year notice period be given, and the Pensions Policy Institute recommends a 10-year notice period. Such notice needs to be given and it is not enshrined in this Bill.

...

We think that the Bill should reflect Lord Hutton's recommendations that the link between public service pension ages and the state pension age should

¹⁵ Second Stage Reading, 29 October 2012, c61

¹⁶ Public Bill Committee, 2nd Sitting, 6 November 2012, p177

¹⁷ BMA letter to CFP, dated 30 August 2013

be kept under review and that this should be conducted by a properly independent body, with public service employees and employers represented and consulted. The Chief Secretary to the Treasury said in his speech that that will happen, but it is not guaranteed in the Bill – indeed, it is unclear whether it is even compatible with the Bill.¹⁸

In the Public Bill Committee, the Opposition recommended that a provision should be included to ensure that scheme members would receive at least 10 years notice prior to future increases in their NPA. The Government were reluctant to do this, citing an on-going review by the Department for Work and Pensions of how the SPA should change in future. The Government deemed it inappropriate to pre-empt the findings of this work.

With regard to the need to enshrine regular reviews of the legislation, the Government did not feel this was necessary, stating:

The Government have already committed to reviewing the state pension age, which underpins the public service pension age provisions, to ensure that it keeps pace with increases in longevity. In the light of that, it is also sensible to wait for clarity on the timing and regularity of state pension age reviews before finalising the arrangements for reviewing pension age provisions.¹⁹

The Government argued any future change of the SPA would be made through legislative change, which would require proper parliamentary scrutiny processes.²⁰

CFP may wish to consider whether there is any merit in enshrining arrangements concerning any future changes of the NPA for public service pensions in Northern Ireland.

3.3 Concentration of Powers in DFP

A number of unions are concerned with the extent to which the current NI Bill concentrates powers relating to public service pensions within DFP. They are concerned that the current NI Bill empowers DFP to make amendments in the short-term future, which undermines the stated underlying aim of the current NI Bill – that is, to represent a long-term arrangement for public service pensions.

The BMA's response to the CFP notes that under clause 11 of the current NI Bill, scheme valuations will be conducted through direction from DFP, with DFP determining the method, data and assumptions to be used. The BMA argue that these powers

¹⁸ Second Stage Reading, 29 October 2012, c70

¹⁹ Public Bill Committee Debate, Fifth Sitting, 13 November 2012, c340

²⁰ Public Bill Committee Debate, Fifth Sitting, 13 November 2012, c341

need to be tempered with a requirement to consult more widely than just the Government Actuary Department.²¹

NASUWT raise concerns about the extent to which DFP is empowered, and how those powers are subject to only negative resolution. For example, Clause 8 gives new powers to DFP to define and redefine the arrangements for public service provision. They consider that such powers should be subject to full consideration of the democratic process, through affirmative procedures.²²

These concerns reiterate points made during the Westminster legislative process. During Second Reading in the Commons, the Shadow Chief Secretary to the Treasury argued:

We think it is right that public service workers should be given as assurance that their pension savings will not be vulnerable to further arbitrary and unfair changes without adequate scrutiny and debate, but the Bill seems to be riddled with loopholes, excluding a number of important scheme features from the list of “protected elements” and stating that the “high hurdle” can be bypassed in order to meet a cost cap that is in turn set by the Treasury with no such requirement for consultation and report.²³

During the Public Bill Committee stage, a number of unions reiterated these points. The representative from Unison stated:

We are concerned that, on the face of it, the measure seems to be giving a lot of power to the Treasury to direct changes, when we believe the emphasis should be on the governance of the individual schemes to do the job. We are also concerned at some of the wide-ranging wording within the Bill that seems to allow a future Government or a future interpretation to change schemes completely without proper consent from Parliament. We are worried about the negative procedure as opposed to the affirmative procedure.²⁴

The TUC representative argued:

...the Government’s commitment that these reforms should last a generation. The shorthand is the 25-year guarantee that clause 20 attempts to introduce by looking at consultation and reporting requirements. Our concern about that is that it is actually very narrowly drafted as it picks out only three protected elements. It leaves aside things such as the revaluation rate, ill-health provisions, eligibility to join the scheme and the pension increase rate. There are lots of factors that, if they were changed, would have a significant impact on members. That is also potentially

²¹ BMA letter to CFP, dated 30 August 2013

²² NASUWT Letter to CFP, dated 30 August 2013

²³ Second Stage Reading, 29 October 2012, c72

²⁴ Public Bill Committee, First Sitting, 6 November 2012, p143

undermined by clause 3, which includes the provision to make retrospective changes.²⁵

The BMA suggested:

We would like to see proper mechanisms for consultation and – this is similar to some other comments – we would like to see it being subject to the affirmative procedure, so that we get away from the potential in the Bill for people simply to write in the rules and regulations regarding pension schemes without having to open themselves to proper scrutiny.²⁶

In light of these criticisms, the Opposition proposed an amendment during the Public Bill Committee stage, which would insert additional protected elements of pension schemes to include; a scheme's definition of pensionable earnings; ill health benefits; and, early retirement rights.

The Government rejected this suggestion, arguing it would restrict the ability of schemes to respond flexibly to future changes in circumstances. The amendment was defeated in the Public Bill Committee.²⁷

The CFP may be interested in investigating whether affirmative or negative resolution is most appropriate for each of the above-stated DFP powers, which are proscribed in the current NI Bill.

The Committee may also find merit in investigating on the potential for breaking parity by granting enhanced protection procedures to features not included in the *2013 Act*. For example, do CFP consider granting enhanced protection to additional pension features, in order to demonstrate a commitment to this being a long term-settlement of public service pensions? This may enhance employee confidence in the reform, and mitigate the threat of increasing numbers of employees opting out. The consequence of this would be where the Westminster Government implement a change to an unprotected element, the responsible authority in Northern Ireland would engage in a full consultation with those affected with a view to agreeing on the reform with them, and would lay a report in the Assembly. This would allow the Assembly to fully investigate the issue. The fundamental issue would remain, that were such a process to result in deviations from the approach adopted at Westminster, the Northern Ireland Assembly would be responsible for these costs.

3.4 Respect for Accrued Rights

The Westminster Government's stated position throughout this reform process has been that:

²⁵ Public Bill Committee, First Sitting, 6 November 2012, p151

²⁶ Public Bill Committee, First Sitting, 6 November 2012, p159

²⁷ Public Bill Committee, Seventh Sitting, 20 November 2012, c410

*It is not our intention to play with accrued rights. Everyone accepts the general principle that those rights must be protected.*²⁸

The Pension Policy Institute states this as a fundamentally important principle:

*[Retrospectivity] has been a commonly held principle in almost all aspects of pensions policy. You do need to be quite careful about blurring that distinction because pensions are about confidence. There is a long-term promise – people promise to pay you in 30 or 40 years' time – and if you get any sense that that promise might not be honoured, that could be corrosive.*²⁹

Within Northern Ireland, concern has been raised about the vagueness concerning the provision granting retrospective powers. In its submission, the NIHRC notes:

*Legislation must be accessible and drafted in a manner which is sufficiently clear to enable foresight of its consequences. **The Commission expresses concerns over the legal certainty of clause 23.***

...

As the clause does not make a retrospective change itself, only permitting regulations that do, it is not possible to comment on the specific human rights implications of regulations under this clause [at this time as the content of the regulations is unknown].³⁰

Such concerns were raised throughout the Westminster legislative process. During the Public Committee Stage, the Opposition voiced concern about the lack of a definition of accrued rights within the Westminster Bill. This echoed comments made by Lord Hutton in his own evidence to the Committee:

*I am a great admirer of the legal profession – I am a lawyer – and if you are going to use such terms [as accrued rights] and chuck them about in a Bill, you need to be really clear about what you are referring to, because you are just inviting someone to test the water. Again, you can never preclude that, but the benefit of having this Bill – there are very strong benefit from having such a Bill at this time – is to resolve these issues, not to leave them hanging in the air.*³¹

The Government accepted there were concerns, but responded:

... if we try to define accrued rights in the Bill, there is a risk of coming up with a definition that acts as a minimum. Without intending to do so, one might end up taking out some accrued rights from one particular scheme

²⁸ Public Bill Committee, Fifth Sitting, 13 November 2012, c344

²⁹ Public Bill Committee, Second Sitting, 6 November 2012, p175

³⁰ NIHRC Letter to CFP, dated 5 September 2013

³¹ Public Bill Committee, First Sitting, 6 November 2012, p162

*because a minimum definition had been provided. That clearly would not be the intention of providing a definition of accrued rights...It is not our intention to play with accrued rights. Everyone accepts the general principle that those rights must be protected...*³²

Compounding this lack of clarity and definition of accrued rights, many unions fear the potential future implications of the powers within the current NI Bill for DFP to make retrospective provisions. The BMA's submission recommends:

*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.*³³

In this context, during the House of Commons Public Bill Committee Stage, the Government rejected a proposed amendment that would mean any retrospective changes affecting accrued rights could be made only with the consent of scheme members or their representatives.³⁴

At Lord's Committee Stage, the Opposition argued that the retrospective provisions within the Westminster Bill were unreasonable and unethical.³⁵ At Report Stage, the Government amended the Bill in relation to retrospective changes that could be deemed to have "significant adverse effects" on scheme members. Such retrospective changes would now require the consent of scheme members who were affected, or the consent of their representatives.

The Opposition remained concerned that this amendment did not go far enough, in that it left responsibility for determining whether a change had a "significant adverse effect" in the hands of the responsible authority. The Government argued that should a responsible authority not behave correctly in this regard, scheme members and their representatives had recourse to the courts.³⁶ Yet, this response may offer little protection to those on low incomes when a change is implemented which the responsible authority do not deem "significant". Such an individual may have a different view on the significance of an adjustment from the responsible authority. As the Opposition noted:

The Minister argued...that there are protections under the European convention of human rights that are justiciable and that any members of those schemes can go through the elongated and far from swift processes of applying for judicial review. How on earth would they pay or cope with

³² Public Bill Committee, Fifth Sitting, 13 November 2012, c344

³³ BMA letter to CFP, dated 30 August 2013

³⁴ Djuna Thurley, Public Service Pensions Bill: Committee Stage Report, House of Commons Library, Research paper 12/72. 29 November 2012

³⁵ HL Deb, 9 January 2013 c189

³⁶ HL Deb, 12 February 2013, c578

*that? What if there was just a change to their accrued benefits of several hundred pounds? The prospect of having to take that all the way through to the European Court of Justice is absolutely disproportionate.*³⁷

Finally, the NASUWT response argues that the provision in the current NI Bill allowing for the negative revaluation of accrued pensions, is a breach of the commitment to protect accrued rights, if the change in prices or earnings is negative.³⁸

In the Public Bill Committee, the Government argued:

*It is important to note that the clause theoretically allows for negative revaluations. It is extremely rare for negative growth to occur. For example, CPI, the Government's preferred measure of prices, has never been negative. None the less, **it would be unfair for members to benefit from the upside risk of revaluation but be shielded from the downside risk.***³⁹

The Committee may be interested in exploring the possibility of defining accrued rights, or in defining what exactly "significant adverse effects" are, within the NI Bill.

3.5 Equality

NASUWT's response to the CFP criticises the lack of a full Equality Impact Assessment for Northern Ireland by DFP⁴⁰. DFP explained the equality dimensions of the current NI Bill as follows:

*With regard to age, it was determined that that was mitigated through the transitional protection measures that are included in the Bill. Also, the policy reflects the Government's approach of removing default pension ages to address trends in longer life expectancy and historical inequalities. Newer, younger staff have higher pension ages than the older staff because of the reform of schemes in the past. In relation to the gender issue, there is the issue of longer life expectancy in general, but, importantly, although women are expected to live longer, in the public service, men typically earn more. In introducing the career average schemes, higher earners will continue to receive higher pensions, but with a fairer, more proportionate method of calculation.*⁴¹

These findings are broadly in line with the assessment of the equality implications of the Westminster Bill, as compiled by HMT:

³⁷ Public Bill Committee, Third Sitting, 8 November 2011, c238

³⁸ NASUWT letter to CFP, dated 30 August 2013

³⁹ Public Bill Committee, Fifth Sitting, 13 November 2012, c308-9

⁴⁰ NASUWT letter to CFP, Dated 30 August 2013

⁴¹ Department of Finance and Personnel (2013), Screening Flowchart and Template for the Public Service Pensions Bill: <http://www.dfpni.gov.uk/public-service-pensions-bill-equality-screening-document.pdf>

The Government does not consider that the common features of the Public Service Pensions Bill will result in any differential impact to persons with the following protected characteristics: disability, ethnicity, age, religion or belief, gender reassignment, pregnancy and maternity, sexual orientation and marriage/civil partnership...

Provisions may impact on persons differently by virtue of their age and / or gender. However, the Government does not consider that these impacts are unlawful or disproportionate. There is a clear justification for the approach we propose to take, as set out later in the chapter.⁴²

However, during the Westminster legislative process a number of interesting equality implications were raised, such as:

- It has been noted that women tend to drop out of the labour market at a younger age than men. Therefore, it has been argued an evidence base exists for arguing that women may require a longer period of lead-in to changes of the NPA than men.⁴³
- The implications of there being a difference in life expectancies for people with different levels of income. A Member of the Public Bill Committee noted that, in her constituency of Oldham East and Saddleworth, people in Oldham East will live 10 years less than people in more affluent Saddleworth. Furthermore, there are issues in relation to quality of life. People on low incomes may not only live shorter lives, but may also be less healthy in terms of their mobility – they are more likely to experience disability.⁴⁴

The CFP may be interested in considering whether the equality impacts of the current Bill have been fully and robustly investigated; whether there is any merit in more detailed analysis?

4 Conclusion

None of the issues raised in submissions made to CFP appear to be either new, or entirely Northern Ireland specific. Essentially they restate criticisms voiced during the Westminster legislative process.

The fact they have been identified again reflects that the Westminster Government did not amend its Bill in response to these complaints. This paper presents the main arguments of the Westminster Government in relation to each of these issues. In many instances the Government's response was a refusal to reconsider the particular issue in question. This paper has sought to clarify the Westminster Government's key arguments against issues raised during the Westminster legislative process.

⁴² HM Treasury, Public Service Pensions: central equalities impact analysis, September 2012, p7

⁴³ Public Bill Committee, Second Sitting, 6 November 2012, p173

⁴⁴ Public Bill Committee, Second Sitting, 6 November 2012, p177

The paper also identifies some issues that CFP may wish to consider further, to investigate whether it may be appropriate given Northern Ireland's circumstances and interests to depart from parity by introducing terms that are different to the Westminster Act. Of course such considerations must include discussion about the potential costs arising from any such departures given the financial framework existing under the prevailing devolution arrangements: under parity, the cost of providing enhanced pension scheme measures would be deducted from the block grant.