

PUBLIC SERVICE PENSIONS BILL
DELEGATED POWERS MEMORANDUM

Prepared by the Department of Finance and Personnel

Introduction

1. This Memorandum identifies those provisions in the Public Service Pensions Bill which confer power to make delegated legislation. In each case, it explains why the power has been taken, why the matter would be dealt with by delegated legislation, and the reason for choosing the Assembly control selected.
2. The Public Service Pensions Bill provides a framework of core provisions for pension reform which will extend across public service schemes made for the public service employments in the devolved administration.
3. The powers in the Bill will supercede powers in existing legislation to create schemes for the payment of pensions and other benefits for devolved public service employments and offices.
4. Legislation to introduce similar provisions in the rest of the United Kingdom has already been enacted. The Public Service Pensions Act 2013 sets out the new arrangements for the creation of schemes for the payment of pensions and other benefits for public service pension schemes in England, Wales and Scotland. It legislates for new pension schemes for the armed forces and non-devolved judicial posts on a United Kingdom wide basis. It provides powers to Ministers of the Westminster Parliament to create public service pension schemes according to a common framework of requirements. The Westminster Act provides powers to HM Treasury to set specific technical details of certain requirements. It also gives powers to the Pensions Regulator to operate a system of independent oversight of the operation of these schemes. It contains powers to the Secretary of State to make regulations requiring scheme managers to keep specified records.

Overview of the Public Service Pensions Bill

5. The Bill establishes a single enabling power to make schemes by 'scheme regulations' for the payment of pensions and other benefits to those in the defined public service employments specified at clause 1. Such regulations are made by the 'responsible authority' for each area of public service employment, as described clause 2 and schedule 2.
6. The Bill makes schemes subject to regulatory oversight by the Pensions Regulator for standards of governance and administration. It sets restrictions on the future use of existing pension scheme powers. It provides for the closure to future accrual and replacement of pension arrangements for existing schemes. It contains provision for the closure to future accrual of bespoke schemes made for public bodies as specified by Order by the Department of Finance and Personnel.

7. Under clause 3 scheme regulations will require the consent of the Department of Finance and Personnel so as to provide ongoing oversight of the cost of public service pension provision.
8. Each scheme (and any statutory scheme that is connected to a scheme) will have a 'scheme manager' under clause 4 who will be assisted by a statutory pension board (clause 5) in ensuring that it is administered in accordance with applicable legislation and regulatory and governance standards.
9. Where a scheme is a defined benefits scheme, it must be established as a 'career average revalued earnings scheme', or another type of defined benefits scheme prescribed by the Department of Finance and Personnel, but not a final salary scheme (clause 8). Where accrued pension earnings need to be revalued by reference to prices or earnings, the prices or earnings measures must be applied on a consistent basis across the public sector (clause 9). The normal pension age of scheme members must be the same as their state pension age or 65, whichever is greater (except for firefighters and members of the police service) (clause 10).
10. Defined benefits schemes must be subject to regular actuarial valuation under clause 11. These valuations will assess and, in certain conditions, rebalance or redistribute scheme costs so that the cost to employers of providing the scheme stays within defined margins (clause 12). Additional valuation requirements apply to defined benefits schemes that operate a pension fund, to ensure the solvency and long-term cost-efficiency of such schemes (clause 13).
11. The Bill seeks to establish a consistent governance and administrative framework for public service pension schemes, to improve transparency and accountability. As well as the requirement for pension boards there is a power to require information to be published or supplied to the Department of Finance and Personnel for collation under clauses 14 and 15 and for the Department of Social Development to require certain records to be kept (clause 16). The Pensions Regulator, which is the regulator for occupational pension schemes, is given extended powers in relation to the governance and administration of public service occupational schemes under clause 17.
12. Existing pension schemes are to be prevented from providing benefits in respect of service after 31 March 2015, or 31 March 2014 for the local government scheme, except where transitional protection will apply (clause 18). Scheme regulations may close existing injury and compensation schemes and make new provisions under clause 1 for such benefits at a date of their choosing under clause 19. For members of reformed pension schemes who also have service in a closed final salary scheme, their final salary for the purposes of the closed scheme will be their final salary when they leave their new scheme (not the date they leave the existing scheme) (clause 20 and schedule 7).
13. Scheme regulations are subject to a standard requirement for consultation before being made or revised (clause 21). The policy intention is that the design of reformed public service schemes should last a generation, and under clause 22 changes to certain core elements of those schemes cannot be made during a twenty five year period unless requirements for enhanced consultation and reporting procedures are met. The enhanced procedure also applies to regulations

that contain retrospective provisions which are capable of having significant adverse effects on members of the scheme.

14. While clause 1 sets out the main groups of public servants to whom each scheme may apply, under clause 25 the Bill allows the permitted membership of each scheme to be extended to other persons in public service and to persons not in public service where the responsible authority considers that appropriate.
15. The reformed Local Government Pension Scheme (Northern Ireland) will come into effect one year earlier than the other reformed schemes. While the changes may be made under their existing powers initially, they will later be treated as made under the Bill, to give full effect to the powers and restrictions it contains (clause 28).
16. The permitted membership of the existing Principal Civil Service Pension Scheme (Northern Ireland) will be able to be extended so that the scope of those able to be members of the current scheme more closely matches the scope of those able to be members of the reformed scheme (clause 29 and schedule 9).
17. Clauses 30 to 32 of the Bill (public body pension schemes) deal with pension schemes established by public authorities for non-departmental public bodies, and arm's-length bodies. Provision is made for their pensions to be provided in the future either under a scheme established by clause 1, or if that is not possible, through a new scheme with similar design features. The standard design features are to apply to new pension schemes for public bodies, including bodies set up after this Bill is enacted (clause 30). Certain features of schemes made under clause 1 apply to new public body pension schemes including the regulatory regime and the arrangements for valuations and an employer cost cap. The Department of Finance and Personnel may specify by Order public bodies which currently make provision for pension and other benefits schemes from allowing future accrual in those schemes (clause 31).
18. The Bill's provisions are to be commenced by an Order made by the Department of Finance and Personnel except for those provisions which extend access to the existing Principal Civil Service Pension Scheme (Northern Ireland) which come into force on Royal Assent (clause 36).
19. The Committee is referred to the Explanatory and Financial Memorandum accompanying the Bill for further background.
20. The Bill has a total of 36 clauses and 9 schedules. There are powers allowing for the making of statutory rules by negative resolution and powers to make statutory rules by both affirmative and confirmatory resolution procedures.
21. The Bill contains provisions which allow regulations to contain such incidental, supplementary, transitory, transitional or saving provisions as the Department of Finance and Personnel considers necessary. This does not, on its own, provide the Department with any additional powers. Rather it allows such provisions to be included in the subordinate legislation made under the Bill.

Provision for delegated powers

22. **Clause 1(1): Schemes for persons in public service**

Power conferred on: the Northern Ireland Departments specified in Schedule 2

Powers exercised by: regulations made by statutory rules

Assembly Procedure: where the regulations contain amendments to primary legislation, make retrospective provision having significant adverse or relate to holders of judicial office (unless minor or beneficial), affirmative; otherwise negative.

23. Clause 1(1) allows regulations to establish schemes for the payment of pensions and other benefits, such as injury and compensation schemes. The “scheme regulations” are made by the Northern Ireland Department responsible for the scheme in question (“the responsible authority”). The persons for whom schemes may be made and the relevant responsible authority are set out in clause 1(2) and schedule 2 respectively.
24. The Bill sets out further requirements as to the contents and procedural requirements for scheme regulations that are made under clause 1, including in the following clauses:
25. clause 3 - scheme regulations. Subject to the other provisions in the Bill, schemes may make any provision which the responsible authority considers appropriate, including, in particular, the list of features set out in schedule 3. They may make consequential, supplementary, incidental or transitional provision. In doing so, scheme regulations may amend primary and secondary legislation and make retrospective provision. Scheme regulations require the consent of the Department of Finance and Personnel.
26. clause 4 – scheme manager. Scheme regulations must provide for a “scheme manager”, or scheme managers, to be responsible for managing or administering the scheme or part of it;
27. clause 5 – pension board. Scheme regulations must provide for the establishment of a “pension board” to assist the scheme manager in ensuring that the scheme is administered in accordance with the scheme regulations and that it complies with legislative and regulatory requirements, including directions issued by the Pensions Regulator under an amended regulatory framework. Scheme regulations for the Local Government Pension Scheme (Northern Ireland) provide for the Northern Ireland Local Government Officers Superannuation Committee, which administers the scheme, to also be the pension board;
28. clause 7 – scheme advisory board. Scheme regulations must provide for the establishment of a board with responsibility for providing advice to the responsible authority for the scheme on the desirability of scheme changes.
29. clause 8 – types of scheme. Scheme regulations may establish schemes including defined benefit and defined contributions schemes. But defined benefits schemes may not be final salary schemes and must be either “career average revalued

earnings schemes” or schemes of a description prescribed in regulations made by the Department of Finance and Personnel;

30. clause 9 – revaluation. Where earnings accrued as pension are to be revalued by reference to changes in prices or earnings in a given period (for example in a career average revalued earnings scheme), the percentage change in prices or earnings to be referred to must be as specified by the Department of Finance and Personnel for that period in an order;
31. clause 10 – pension age. The normal pension age of members of schemes under the Bill must be their state pension age or 65, whichever is greater (except for firefighters, and members of the police forces for whom the normal pension age is to be 60). The deferred pension age must be their state pension age or 65, whichever is greater, for all schemes;
32. clause 11 – valuations. Schemes under the Bill are required to have actuarial valuations. Clause 11(2) permits the Department of Finance and Personnel to make directions about how schemes are to be actuarially valued;
33. clause 12 – employer cost cap. Scheme regulations must set a rate, expressed as a percentage of pensionable earnings of members of the scheme, called the “employer cost cap”. The regular scheme valuations will be used for the purpose of assessing whether the costs of the scheme have breached pre-determined margins and triggering remedial action if they have; scheme regulations may set a procedure for determining how the scheme is to address a breach of the margins by seeking agreement between the scheme manager, employers and members. They may also set a default adjustment that will be used if the procedure fails to produce an agreed response (clause 12(6));
34. clause 13 – employer contributions in funded schemes. Funded schemes, such as the local government pension scheme must provide for pension fund valuations to value the fund and set the rate of employer contribution needed to secure the solvency and long-term cost-efficiency of the scheme (so far as relating to the pension fund);
35. clause 18 – restriction of existing pension schemes. Scheme regulations may provide for exceptions to the restriction on providing benefits in respect of future service, by way of transition, including by amending existing schemes;
36. clause 19 – closure of existing injury and compensation schemes. Scheme regulations may close existing injury and compensation schemes; again exceptions for transitional purposes may be provided;
37. clause 21 – consultation. Before scheme regulations are made, the responsible authority must first consult with those who appear likely to be affected by them;
38. clause 22 – procedure for protected elements . Before making a change to “protected elements” of a scheme, such as the career average revalued earnings design, consultation with a view to reaching agreement is required with those who appear likely to be affected. A report must also be laid before the Assembly

explaining why the change is proposed having regard to the desirability of not changing protected elements within the 25 year period from 1 April 2015.

39. clause 23 – procedure for retrospective provision. Proposed regulations which include provisions with retrospective effect which appear to the responsible authority to have significant adverse effects in relation to the pension payable to or in respect of members of the scheme must have the consent of the persons (or representatives of the persons) who appear likely to be affected by the provisions. Proposed regulations with retrospective effect which appear to the responsible authority to have significant adverse effects in any other way in relation to members of the scheme require consultation with affected parties with a view to reaching agreement;
40. clause 24 – other procedure. Regulations which amend primary legislation or make retrospective provision which appears to the responsible authority to have a significant adverse effect on members of the scheme are subject to the affirmative procedure; otherwise, they are negative,
41. clause 25 – extension of schemes. Scheme regulations can include provision for persons who are not within clause 1(2), including persons who are not in public service.
42. **Clause 1(3) and Schedule 1, paragraph 2: Persons in public service: definitions:**

Power conferred on: the Department of Justice

Assembly Procedure: negative

Powers exercised by: order made by statutory rule

43. Paragraph 2(1) of Schedule 1 allows the Department of Justice to specify by order "holders of judicial office" for the purposes of pension provision.
44. These order-making powers are needed to set out who the responsible authority is for the pension matters of 'holders of judicial office'.
45. It is considered that the negative procedure is sufficient for these orders. The power conferred is similar to the existing arrangement in the service pension scheme where the Department of Finance and Personnel may specify employments eligible for that scheme by orders subject to the negative procedure.

46. **Clause 8(2)(b): Types of scheme**

Power conferred on: the Department of Finance and Personnel

Powers exercised by: regulations made by statutory rules

Assembly Procedure: negative

47. Clause 8(2)(b) allows the Department of Finance and Personnel to make regulations to prescribe what type of defined benefits schemes other than career average revalued earnings schemes are to be permissible in scheme regulations. The power may not be used to prescribe defined benefits schemes of the final salary type.
48. The reformed public service schemes that are proposed to be made under clause 1 are all career average revalued earnings schemes. That design was recommended by the Independent Public Service Pensions Commission. It is expected that for the foreseeable future all defined benefits schemes will be of that type.
49. The power would allow the Department of Finance and Personnel to prescribe alternative designs. The provision allows for such designs should they ever be required, without the need for further primary legislation.
50. It is considered that the negative procedure is appropriate since expanding the permitted range of scheme designs by regulations has no direct effect on what pensions are actually provided. Any new design would be implemented through scheme regulations, which are ordinarily subject to the negative procedure, and require consultation with affected parties, under clause 21(1). A change of this kind would engage the higher protection of clause 22 and so require consultation with a view to reaching agreement and a report to be laid before the Assembly, because it would change the extent to which a scheme is a career average revalued earnings scheme – see the definition of “protected elements” in subsection (5) of that clause.

51. **Clause 9(2): Revaluation**

Power conferred on: the Department of Finance and Personnel

Powers exercised by: order made by statutory rule

Assembly Procedure: affirmative – only if the order specifies a percentage decrease; the negative procedure will apply in any other case

52. Clause 9(2) allows the Department of Finance and Personnel to specify by order what change in prices or earnings is to be referred to by schemes for a particular period when they revalue earnings that have accrued as pension. Its purpose is to provide for such revaluations to be conducted on a consistent basis across the public service with regard to the choice of index and the period.
53. An order must be made each year taking into account changes in the relevant factors over the relevant period. By its nature, the percentage change of these factors is subject to regular variation and is therefore suited to delegated legislation. Similar procedures apply to the regular uprating of benefits (under the *Social Security Administration (Northern Ireland) Act 1992*) and official pensions in payment (under the *Pensions (Increase) Act (Northern Ireland) 1971*).
54. The order concerns a financial matter based on a technical calculation derived from published statistics. The negative procedure is considered to provide an appropriate degree of Assembly control where, as is normally the case, the order specifies a percentage increase. The affirmative procedure would apply in the case where

there is a negative revaluation. The rate of revaluation (whether by reference to earning or prices, and whether subject to an additional uplift) will be consistent with discussions with member representatives and the Department of Finance and Personnel.

55. **Clause 11(2): Valuations**

Power conferred on: the Department of Finance and Personnel

Powers exercised by: directions

Assembly procedure: none

56. Clause 11(2) permits the Department of Finance and Personnel to make directions about how defined benefits schemes are to be actuarially valued. Its purpose is to provide for such valuations to be conducted on a consistent basis across the Northern Ireland public service schemes.

57. Subsection (3) lists particular matters which may be specified by direction including how and when valuations are to be carried out, the time in relation to which schemes are to be valued, the data, methodology and assumptions to be used in a valuation, and whether and how connected schemes are to be valued together. While there is a need for consistency across the public service schemes with respect to such matters, the Department of Finance and Personnel also needs to be able to revise its directions as circumstances change.

58. Department of Finance and Personnel directions made under this clause, and variations and revocations of them, can only be made after the Department of Finance and Personnel has consulted the Government Actuary: subsection (4).

59. Department of Finance and Personnel directions under this clause will concern technical matters of actuarial practice and will not directly affect the value of pensions or the interests of members. It is therefore considered to be unnecessary for them to be subject to Assembly control.

60. **Clause 12(3): Employer cost cap: directions**

Power conferred on: the Department of Finance and Personnel

Powers exercised by: directions

Assembly Procedure: none

61. Clause 12(3) enables the Department of Finance and Personnel to make directions about how the employer cost cap is to be set. The directions may specify in particular how the first valuation of a new scheme under clause 1 of the Bill is to be taken into account in setting the cap. Subsection (4) enables the Department of Finance and Personnel to make directions specifying the costs, or changes in costs, that are to be taken into account on subsequent valuations of a scheme when assessing changes in the cost of the scheme against the employer cost cap. Subsection (4) also enables the Department of Finance and Personnel to make directions specifying the extent to which the costs, or changes in costs of any

connected scheme are to be taken into account in the operation of the employer cost cap.

62. The Department of Finance and Personnel will use the directions to set consistent standards for the employer cost cap for all defined benefit public service pension schemes. The effect of the directions on the design of the scheme will be subject to Assembly oversight when the scheme regulations are made. It is therefore considered unnecessary for the directions themselves to be subject to additional Assembly control.

63. **Clause 12(5): Employer cost cap: regulations**

Power conferred on: the Department of Finance and Personnel

Powers exercised by: regulations made by statutory rule

Assembly procedure: negative

64. Clause 12(5) requires the Department of Finance and Personnel to make regulations to secure that the cost to employers of schemes made under the Bill remains within defined margins that will be set either side of the “employer cost cap”, which is a rate expressed as a percentage of pensionable earnings. The Department of Finance and Personnel regulations must also specify a target cost for a scheme, if the cost of the scheme goes beyond those parameters. These regulations may include consequential or supplementary provision under subsection (8).

65. The main aspects of how the cap is to work are indicated in the primary provision. It is considered appropriate to set out the details in delegated legislation within the framework set by the clause.

66. The Department of Finance and Personnel will use the regulations to set out consistent standards for all public service schemes. The regulations follow the negative procedure like scheme regulations, which is considered appropriate because broad design is already established by primary legislation. The purpose of the regulations is to manage the financial risk in public service schemes.

67. **Clause 14(2)(b): Information about benefits**

Power conferred on: the Department of Finance and Personnel

Powers exercised by: direction

Assembly Procedure: none

68. Clause 14(2)(b) allows the Department of Finance and Personnel to direct scheme managers for schemes made under clause 1 which are defined benefits schemes to provide any information the Department of Finance and Personnel considers appropriate in a statement describing scheme benefits earned by a person in respect of his or her pensionable service.

69. The power is considered appropriate for delegated legislation so that the information can be varied easily in response to current benefit information needs. No Assembly procedure is considered necessary given the routine nature of the information in question.

70. **Clause 14(6): Information about benefits**

Power conferred on: the Department of Finance and Personnel

Powers exercised by: direction

Assembly Procedure: none

71. Clause 14(6) allows the Department of Finance and Personnel to direct scheme managers for schemes made under clause 1 which are defined benefits schemes as to the manner in which they are to provide a benefit information statement required under clause 14(1).

72. The power is intended to be used to secure the production of consistent and timely information about benefits across each of the public service pension schemes made under clause 1. No Assembly procedure is considered necessary given the routine nature of the information in question.

73. **Clause 15(1): Information**

Power conferred on: the Department of Finance and Personnel

Powers exercised by: direction

Assembly Procedure: none

74. Clause 15(1) allows the Department of Finance and Personnel to direct scheme managers or the responsible authority for schemes made under clause 1 to publish information about the scheme or provide such information to the Department of Finance and Personnel. Its purpose is to improve the transparency and accountability of public service schemes by ensuring that consistent information is made available about all such schemes.

75. The power is considered appropriate for delegated legislation so that the information requested can be varied easily in response to current information needs; other information requirements placed on schemes; and best practice in making appropriate information available. It is similar in nature to the accounting directions the Department of Finance and Personnel issues to public sector bodies (see for example section 9(2) of the Government Resources and Accounts Act (Northern Ireland) 2001).

76. The power is intended to be used to secure the production of consistent and timely information from schemes to allow accurate comparisons to be made across the public service schemes. No Assembly procedure is considered necessary given the routine nature of the information in question. It is noted that the power cannot be used to require information that could not otherwise be published or provided (for example because of data protection concerns).

77. **Clause 16(1): Records**

Power conferred on: Department for Social Development

Powers exercised by: regulations made by statutory rule

Assembly procedure: negative

78. Clause 16 allows the Department for Social Development to make regulations setting out the records that scheme managers of public service pension schemes established under clause 1 and other statutory pension schemes that are connected with them are required to keep.

79. Secondary legislation is appropriate given the level of detail and the possibility that the precise record-keeping requirements may need to be changed from time to time in the future. As with similar powers in pensions legislation (see for example section 59 of the Pensions No.2 Act (Northern Ireland) 2008), the powers are subject to negative resolution procedure.

80. **Clause 17(2): Regulatory oversight**

Power conferred on: Department for Social Development

Powers exercised by: order made by statutory rule

Assembly procedure: confirmatory

81. Clause 17(2) allows the Department for Social Development to make an order making consequential and further provision in connection with the regulation of public service pension schemes that are created or regulated under this Bill. Such provision may amend primary and secondary legislation (including this Bill, once enacted).

82. The provision is necessary to ensure that there are no unintended consequences as a result of the new regulatory provisions. Although care has been taken to make sure that these provisions fit within existing legislation, the extent and complex nature of pensions legislation coupled with the uncertainty about precisely what shape the new schemes will take means that it is possible that further minor changes may be needed to ensure that the new regulatory regime can operate appropriately.

83. As the power provides for the amendment of primary legislation, it is appropriate that it should be made subject to confirmatory procedure to ensure Assembly scrutiny as a matter of course.

84. **Clause 25(5): Extension of schemes**

Power conferred on: the responsible authority (specified NI Departments) (see clause 1(1) above)

Powers exercised by: determination

Assembly procedure: none

85. Clause 25(5) allows the responsible authority for a scheme made under clause 1 to determine that the scheme is to apply to some or all of the persons not in public service who are potentially eligible under the scheme regulations.
86. Some public service pension schemes have long allowed persons who are not in public service to join a public service scheme (perhaps because their work is similar to that done by public servants) or to remain in such a scheme (for example if their functions are transferred into the private sector). Scheme regulations can provide for the general descriptions of person who should be eligible to join the scheme and what modifications, if any, apply. But it is appropriate to allow the precise eligibility of each scheme to be set by determination so that scheme regulations do not have to be amended each time there is a change to the workforce. Determinations can have retrospective effect to ensure there is no gap in any person's pension provision.
87. There is no Assembly procedure for such determinations because they operate within the scope set by scheme regulations which will have been subject to the negative procedure. Under clause 25(9) there is a requirement for the responsible authority to publish a list of the persons to whom the scheme relates by virtue of determinations. This provides transparency and allows accountability for how the power has been used.

88. **Clause 29 and Schedule 9: Existing schemes for civil servants: extension of access: determinations**

Power conferred on: the Department of Finance and Personnel

Powers exercised by: determination

Assembly Procedure: none

89. Clause 29 and Schedule 9 amends the Superannuation (Northern Ireland) Order 1972 and inserts a new sub paragraph (3A) in Article 3 of that order as well as a new Article 3A. Its purpose is to allow access to the existing Principal Civil Service Pension Scheme (Northern Ireland) to be extended to persons who were formerly members of the scheme but ceased to be so eligible, either after (see new Article 3A (2)) or before (see new Article 3A(3)) clause 29 comes into force.
90. It also allows persons who do not fall into those categories to be eligible for membership of the scheme if they are in employment or an office of a kind described in regulations made under new Article 3A(4). The eligibility of employment or an office specified in reliance on sub- paragraph (4) can apply with retrospective effect (sub - paragraph (5)).
91. In each case, a person becomes eligible to join the scheme by virtue of new sub-paragraph (3A) of Article 3 if: i) they fall within the categories set out in new article 3A; and ii) the Department of Finance and Personnel specifies that their employment or office is to be eligible. The Department of Finance and Personnel is required to specify the employment or office in a list which is to be published.

92. The arrangements described above permit access to the scheme until it is reformed. Their purpose is to allow former members of the scheme to remain in or rejoin the scheme if their membership of the scheme came to end when their service was contracted out.
93. The model of generic eligibility being set in primary or secondary legislation and specific admission being set by the Departmental decision evidenced by a statutory list is based on the arrangements in clauses 1 and 25 for reformed schemes. The reformed civil service scheme can have a much broader membership than the current one. These powers to extend membership of the current scheme are considered desirable to prevent decisions on contracting-out, to improve the efficiency of public administration, being delayed until the reformed civil service scheme (with its wider eligibility) is introduced in 2015.
94. It is considered appropriate to provide for changes at employer-specific level, within an overarching legislative framework, in this way.
95. **Clause 29 and Schedule 9: Existing schemes for civil servants: extension of access: regulations**
- Power conferred on: the Department of Finance and Personnel*
- Powers exercised by: regulations made by statutory rule*
- Assembly Procedure: negative*
96. New Article 3A(4)(a) of the Superannuation Order (Northern Ireland) 1972, inserted by Schedule 9 paragraph 3, allows the Department of Finance and Personnel to prescribe an employment or an office by description in regulations as a prerequisite for specifying that employment or office as eligible for admission to the Principal Civil Service Pension Scheme (Northern Ireland) under new subsection (3A) of Article 3. It is intended that the power would be used in exceptional cases to enable specific persons or categories of persons to be members or to retain or regain membership of the scheme.
97. New Article 3A(7) of the Superannuation Order (Northern Ireland) 1972 allows the Department of Finance and Personnel to prescribe by regulations the requirements for the list of specified employments and offices (see above), including the information that it must contain.
98. These regulations will control the operation of the new arrangements to extend access to the existing civil service scheme, until it is reformed. They follow the same procedure as the order-making power under Article 3(4) of the 1972 Order for adding bodies to Schedule 1 to that Order.
99. **Clause 31(1): Power to restrict other existing public body pension schemes**
- Power conferred on: the Department of Finance and Personnel*
- Powers exercised by: orders made by statutory rule*
- Assembly procedure: negative*

100. Clause 31(1) allows the Department of Finance and Personnel to specify by order public bodies whose pension schemes would be restricted and so that no benefits are provided under the scheme to or in respect of a person in relation to their service in the schemes after a specific date.
101. The purpose is to account for bespoke schemes made for public bodies whose pension arrangements must be reformed.
102. The power may amend primary and secondary legislation in consequence of, or for, purposes supplementary to closing these public body schemes to future accrual and making new pension provision. This is needed to ensure that existing statutory provisions are consistent with the new arrangements. Such amendments are expected to be both minor and technical. Given that the policy intention for reform of public body pensions and new scheme design is governed by provisions in primary legislation set out in clause 30 and clause 31 it is considered that the negative procedure is appropriate, even when primary legislation is amended.
103. **Clause 31(7): Restriction of certain existing public body pension schemes: new schemes**
- Power conferred on: a public authority with responsibility for a public body pension scheme*
- Powers exercised by: legal document etc*
- Assembly procedure: none*
104. Clause 31(7) allows public authorities who have restricted pension schemes in accordance with subsection (2) to establish a new scheme for the payment of such benefits provided that the persons for whom the scheme would be made are not eligible to join one of the public service pension schemes made under clause 1.
105. The schemes in question concern members and officeholders at non-departmental public bodies, arm's length bodies and similar bodies and offices (as specified by order by the Department of Finance and Personnel under subsection 1). The intention is that all public service pension provision will in future be made, so far as possible, on a similar basis in the interests of fairness and consistency between public service workers. Where possible these members and officeholders will be eligible to join a clause 1 scheme so the power in subsection (7) would only be used exceptionally.
106. **Clause 36: Commencement**
- Power conferred on: the Department of Finance and Personnel*
- Powers exercised by: order made by statutory rule*
- Assembly procedure: none*
107. This clause provides powers for the commencement of the Bill.

108. The following provisions come into force on Royal Assent: clause 29 and Schedule 9 (existing schemes for civil servants: extension of access); clause 33 (general interpretation); clause 34 (Regulations, orders and directions); clause 35 (Financial provision); this clause and clause 37 (short title).
109. The Department of Finance and Personnel may by order appoint a day or days on which the other provisions of the Bill are to come into force and may appoint different days for different purposes. There is also a power to make transitional, transitory or saving provision .
110. This power is necessary to ensure a smooth transition to the new arrangements provided for in this Bill. As with commencement orders generally, there is no Assembly procedure for these powers.
111. **Schedule 4, paragraph 2(5): Insertion of new sub paragraph(6A)(b): Article 2 General interpretation**
- Power conferred on: the Department for Social Development*
- Powers exercised by: order made by statutory rule*
- Assembly Procedure: negative*
112. The new sub-paragraph allows the Department for Social Development, after consulting with the Department of Finance and Personnel, to exclude schemes from the definition of public service pension scheme in the Pensions (Northern Ireland) Order 2005, thereby excluding them from the new regulatory provisions created for public service pension schemes.
113. It is anticipated that the new regulatory provisions will apply to all new schemes under the Bill and many of the existing schemes. However, in some cases, the structure of an existing scheme may mean that the new provisions will not be necessary or appropriate. Some public body schemes may already be subject to the regulatory regime for trust-based schemes and it may therefore be sensible to exclude them from the definition to avoid overlapping provision.
114. The power to exclude is exercisable by order and subject to negative resolution procedure. This is appropriate given the proposed limited use of the power.
115. **Schedule 4, paragraph 14: Insertion of Article 85A Codes of practice: public service pension schemes**
- Power conferred on: the Pensions Regulator*
- Powers exercised by: statutory code of practice*
- Assembly Procedure: Code of practice to be approved by Department for Social development and laid before the Assembly, subject to negative resolution*
116. New Article 85A of the Pensions (Northern Ireland) Order 2005 allows the Pensions Regulator to issue codes of practice for public service pension schemes in relation

to the exercise of their functions under pensions legislation. The Pensions Regulator is required to issue codes of practice relating to the matters listed in clause 85A(2).

117. The provision mirrors Article 85 which applies to pension schemes more generally. The codes will not be directly enforceable (see subsection (4)) although they may be admissible in evidence. As with the existing codes, these codes will give practical guidance on legal requirements and standards of conduct to assist those concerned in the administration of the public service pension schemes. The codes will help augment the legislation and assist in ensuring a proportionate regulatory approach.

118. The current codes are subject to a procedure set out in Article 86 of the Pensions (Northern Ireland) Order 2005 whereby the Pensions Regulator is required to consult on a draft before sending it to the Department for Social Development for approval. If approved, the Department for Social Development lays the code before the Assembly. It is then subject to the negative resolution procedure. This procedure will be adopted for the new codes of practice under Article 85A as well.

119. **Schedule 4, paragraph 14: New Article 85A(2)(k) Codes of practice: public service pension schemes**

Power conferred on: the Department for Social Development

Powers exercised by: statutory rule

Assembly Procedure: negative

120. As with Article 85 of the Pensions (Northern Ireland) Order 2005, there is a power for the Department for Social Development to prescribe additional matters on which the Pensions Regulator must issue a code.

121. Although all matters on which codes need to be published at present have been identified, it is possible that new areas may be identified in the future and it is therefore sensible to build in this flexibility. Again, as with the existing power, the power to specify additional areas is subject to negative resolution.

122. **Schedule 4, paragraph 19: New Article 225A(3)(b) Requirement for Knowledge and Understanding: pension boards of public service pension schemes**

Power conferred on: the Department for Social Development

Powers exercised by: regulations made by statutory rule

Assembly procedure: negative

123. Paragraph 19 inserts a new Article 225A into the Pensions (Northern Ireland) Order 2005. The Article mirrors for pension board members an existing provision in Article 224 of the Pensions (Northern Ireland) Order 2005, which sets out requirements for trustees to have a certain level of knowledge and understanding.

124. New Article 225(3)(b) allows the Department for Social Development to prescribe in regulations the matters of which a pension board member must have knowledge and understanding in addition to law relating to pensions.
125. As with the existing power in Article 224, this power will be subject to negative resolution. There is no immediate plan to use the power (and the power in section 224(4) has not been used to date), but as the pension board structure has not yet been fully developed in practice and given there may be a degree of variation in the make-up of the boards across the different schemes, it is sensible to have the flexibility to specify new matters to ensure a common standard.