

## Assembly Section

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Mr Shane McAteer  
Clerk  
Committee for Finance and Personnel  
Room 419  
Parliament Buildings  
Stormont

Our Ref – CFP273/11-15

30 October 2013

**Dear Shane,**

### **PUBLIC SERVICE PENSIONS BILL**

On 10 October the Committee requested the Department's view on a number of drafting points and other issues arising from its deliberations on the Public Service Pensions Bill. The Department's response on each of the issues raised is given below in the order raised in the Committee's letter.

### **INSERTION OF AN OVERVIEW CLAUSE**

#### **Committee query**

*"Given that this is an enabling bill, what would be the Department's view on an amendment to insert an overview/purpose clause at the beginning of the Bill, setting out the guiding principles or policy objectives which the subsequent subordinate legislation should follow?"*

#### **Departmental response**

It is not drafting practice to include overview clauses in bills of the Northern Ireland Assembly. This is not to say that such clauses could not be included, where appropriate.

As this is a framework Bill, the guiding principles which those Departments making subsequent subordinate scheme legislation should adhere to are already set out in the clauses of the Bill itself and provide the necessary overview requirement within which Departments have scope to hone scheme design to suit the needs of their individual workforces. For these reasons it is difficult to see what form such a clause would take if it were to be helpful.

## CLAUSE 1 – SCHEMES FOR PERSONS IN PUBLIC SERVICE

### Committee query

*“What would be the Department’s view on an amendment to subsection (1) as follows:*

*‘Regulations may establish schemes for the payment of pensions and other **[insert ‘similar’]** benefits to or in respect of persons specified in subsection (2).’ “*

### Departmental response

The enabling powers in this clause are specifically for the establishment of new public service pension schemes and schemes providing *other* benefits, such as injury and compensation benefits.

The extent to which these other benefits are *similar* is not defined or classified. Certainly the purpose of, and the circumstances in which Injury benefits and compensation benefits are payable differ from those for pensions. The Department’s view is that the proposed amendment would not add to description of pension and other benefits which the bill provides for and is unnecessary.

### Committee query

*“What would be the Department’s view on amendments to subsection (2) as follows:*

- *Paragraph (c): replace ‘local government workers’ with “local government staff” to avoid including people working in the local government sector who are not employees (e.g. contractors). Similarly with ‘health service workers’ at (e);*
- *Paragraph (d): replace ‘teachers’ with ‘teachers in the public sector’ to clarify that the provision does not cover teachers within private schools;*
- *At the end of subsection (2) consider adding a provision to cover any other classes of persons specified by order in accordance with clause 25.”*

### Departmental response

The Bill provides the overall provision that regulations may establish schemes for the public service employments specified at clause 1 such as ‘local government workers’ or ‘teachers’. These broad categories of employment are defined at schedule 1 of the Bill. It will be a function of the secondary scheme legislation to give further definition to employment status for members’ where this might be required and to set out the criteria for eligibility for employees in the pension scheme.

## **CLAUSE 3 – SCHEME REGULATIONS**

### **Committee query**

*“What would be the Department’s view on an amendment to subsection (3), paragraph (c) to leave out ‘allow any person to exercise a discretion’?”*

*If the Department considers this provision necessary, what clarification can be provided on how much discretion can be exercised under this provision? Can some examples be provided of how this discretion could be exercised?”*

### **Departmental response**

Departmental discretion is a common feature of existing pension scheme rules. It provides flexibility in the delivery of ancillary benefits and entitlements in respect of service given by scheme members. For example the payment of death benefits for most schemes is classed as a ‘discretionary’ entitlement. This is a permissive provision which is beneficial to members in that such discretionary benefits are treated separately for purposes of taxation and are not generally subject to inheritance tax.

### **Committee query**

*“Subsection (4) – Does the Department consider that an amendment is needed to clarify that the consequential amending provision does not apply to this Act?”*

### **Departmental response**

The Department is content that an amendment to specify the consequential amending provision referred to in clause 3(4) is not required. Scheme regulations made under the Bill cannot overturn the core requirements of the primary legislation.

## **CLAUSE 5 – PENSION BOARD**

### **Committee query**

*“Subsection (3) – What clarification can the Department provide on how ‘securing compliance’ can be shown and on what safeguards exist to protect people from scheme mismanagement?”*

### **Departmental response**

Scheme Pension Boards will have access to the annual reports which are required of scheme managers and chief accounting officers and also the additional scheme information and records that will be a requirement under clauses 15 and 16 of the Bill. The Bill introduces a framework for scheme valuation and cost cap processes

which provide new common standards against which pension boards can measure and assess scheme compliance.

There are extended powers for the Office of the Pension Regulator and an accompanying new code of practice will apply for schemes made under the Bill. The Pensions Regulator has powers to impose fines where appropriate where scheme mismanagement occurs.

### **Committee query**

*“Subsection (4) – What stronger term can the Department offer to replace ‘desirability’?”*

### **Departmental response**

The term is general and describes only the aim of securing the effective and efficient governance and administration. It does not impact on the measures put in place in the Bill to achieve the aim of effective and efficient scheme governance. The provisions which will be the measure of effective and efficient scheme governance are specified throughout the clauses of the Bill. e.g. for Pensions Boards at clause 5, Scheme Advisory Boards at clause 7, and at clauses 14 to 17 which deal specifically with improving administration, governance and extended powers for the Pension Regulator.

### **Committee query**

*Subsection (5), paragraphs (a) and (b) – What is the Department’s view on an amendment to create it an offence for a member of a board to not declare any conflict of interest? What are the sanctions for failure to comply with paragraph (b)?*

### **Departmental response**

The Pension Regulator is preparing to consult on a code of practice which will provide principles, examples and benchmarks against which scheme managers and the members of pension boards can consider whether or not they are reasonably complying with and have understood their duties and obligations, including an obligation to declare a conflict of interest.

Under article 65 of the Pensions (Northern Ireland) Order 2005 scheme managers and the members of pension boards have a statutory duty to assess if a duty which is relevant to the administration of a scheme in question has been breached or is not complied with and to make a report to the Pensions Regulator. The Regulator has powers to impose penalties and fines where breaches have occurred and can in some cases prosecute offences in the criminal courts.

### **Committee query**

*“Subsection (5), paragraph (a), subparagraph (ii) – What is the Department’s view on replacing ‘satisfied from time to time’ with a specified time period (e.g. every three months)?”*

### **Departmental response**

The usage of this form of words is in line with provisions of the Interpretation Act (Northern Ireland) 1954 which at Section 17 states *that “where an enactment confers a power or imposes a duty, the power may be exercised and the duty shall be performed from time to time, as occasion requires.”* The periodic intervals which are to apply may be further defined in secondary legislation following consultation with stakeholders.

## **CLAUSE 8 – TYPES OF SCHEME**

### **Committee query**

*“Subsection (2) – What is the Department’s view on an amendment to insert ‘to any extent’ after ‘benefits scheme’?”*

### **Departmental response**

The meaning of “defined benefits scheme” is clearly given at clause 33 of the Bill. A pension scheme is a “defined benefits scheme” if **or to the extent** that the benefits that may be provided under the scheme are not money purchase benefits (within the meaning of the Pension Schemes (Northern Ireland) Act 1993) or injury and compensation benefits. The Department’s view is that further clarification is unnecessary.

### **Committee query**

*“Subsection (5) - What is the Department’s view on an amendment to require the regulations to be made by affirmative rather than negative resolution, given that this goes to the heart of the Bill?”*

### **Departmental response**

The Department considers that the negative procedure is appropriate. It is the commonly employed mechanism for scheme regulations and allows appropriate Assembly scrutiny of the provisions of regulations and the chance to debate those regulations if the Assembly wishes to do so.

Also, any proposal for a change of scheme design kind which would diverge from the CARE model would engage the higher protections of Clause 22 and so require

extended consultation with TUS and an additional report to be laid before the Assembly.

## **CLAUSE 9 – REVALUATION**

### **Committee query**

*“Subsection (1), paragraph (a) – What is the Department’s view on an amendment to clarify that the revaluation is required ‘at specified periods’”*

### **Departmental response**

Clause 9 (1) does not specify that a scheme must conduct a revaluation of earnings or accrued pension but that in cases where a scheme requires a revaluation then it should be made in line with the order made by the Department of Finance and Personnel.

Under the Bill schemes the responsible authority for each scheme has flexibility to give effect to different agreements on revaluation made in consultation with employee representatives in scheme level consultations. Scheme regulations may address these specific arrangements and an amendment in the Bill is not required. Subsection 4 of clause 9 requires that the orders made by the Department of Finance and Personnel under this clause must be made annually.

### **Committee query**

*“Subsection (1), paragraph (b) – What is the Department’s view on an amendment to clarify that the revaluation should be by reference that reflects changes in prices or earnings...?”*

### **Departmental response**

The measures used are the specified Government measures such as the Consumer Prices Index and the Retail Prices Index which are used to inform the uprating of earnings and deferred benefits in uprating orders made annually by the Department of Finance and Personnel. These correspond with the overall changes made by HM Treasury.

### **Committee query**

*“Subsection (3) – How would the Department respond to the view that this provides DFP with too much discretion?”*

### **Departmental response**

The power does not give as much discretion as appears because the methodology has to be reasonable and grounded in observable and measurable changes in the

economy. It is not feasible to simply pick a number, you would have to be able to prove the relationship with an underlying metric representing the general level of prices or earnings.

### **Committee query**

*“Subsection (4), paragraph (b) – What is the Department's view on an amendment to leave out ‘may make different provision for different purposes’?”*

*“Why does the Department consider that the power to ‘make different provision for different purposes’ is required?”*

### **Departmental response**

It is not necessary to include paragraph (b) of subsection (4) because of the provisions of section 17 of the Interpretation Act (NI) 1954. This provides that *“Where an enactment empowers any person or authority to do any act or thing, all such powers shall be deemed to be also given as are reasonably necessary to enable that person or authority to do that act or thing or are incidental to the doing thereof.”* However, it was thought that, in this case, it would be helpful to the reader to include a specific reference.

In terms of the policy intent that the revaluation order may make different provisions for different purposes is to allow flexibility to give effect to different agreements on revaluation made with representatives of members of different schemes. For example, the agreed scheme design for firefighters could include revaluation of active members' accrued benefits by reference to the general change in earnings, whereas the agreed scheme design for civil servants could include revaluation of accruals by reference to the general change in prices. The Department would be content with an amendment to omit the provision if this is the Committee's preference.

### **Committee query**

*“Subsection (5) (b) – What clarification can the Department provide on the application of this provision in circumstances where the order is specifying a percentage increase which would result in a decrease in real terms?”*

### **Departmental response**

An order specifying a percentage increase will effect an increase in the revaluation of earnings. This is the normal outcome of annual revaluation. In the rare occasion where the annual change in the measure of prices or earnings is negative a corresponding order would result in a percentage devaluation of earnings or accrued benefits. Such an order would be subject to the wishes of the Assembly via of the affirmative resolution procedure.

## **CLAUSE 10 – PENSION AGE**

### **Committee query**

*“Subsection (1), paragraphs (a) and (b) – How does the Department consider this provision might be clarified or is there a choice on offer?”*

### **Departmental response**

There is no choice on offer. The clause is constructed to take account of the fact that females currently have a state pension age which is less than 65. From 1 April 2014 in the Local Government Pension Scheme and 1 April 2015 in the schemes for the other public service employments (except the schemes for police officers and firefighters) pension age must be the same as state pension age but in any case no lower than 65.

## **CLAUSE 11 – VALUATIONS**

### **Committee query**

*“Subsections (2), (3) and (4) – What justification does the Department have for these powers of direction and why is it required to consult only with the Government Actuary?”*

### **Departmental response**

The clause reflects the overall policy to formalise processes for valuations for schemes made under the Bill. The Department of Finance and Personnel has overall oversight responsibilities for Departmental budgets and spending plans and is the appropriate body to implement and oversee directions to regulate processes for public service pension scheme valuations and costs.

The DFP function in making these directions is equivalent to that carried out by HM Treasury for the public service schemes in Great Britain made under the Public Service Pensions Act 2013. The directions deal with the technical processes for how and when valuations are carried out, the type of data used and relevant demographic assumptions used to inform them. The technical expertise of the Government Actuary's Department is required to accomplish this and ensure the provision ensures this input. The Department of Finance and Personnel has given an undertaking at the Collective consultation working group for the Bill that it will consult with employee representatives on its draft directions.



## **CLAUSE 12 – EMPLOYER COST CAP**

### **Committee query**

*“Subsection (8), paragraph (a) – What is the Department’s view on the need for including the term ‘or supplementary’?”*

### **Departmental response**

Powers to make supplementary provisions are common in public service pension legislation. “supplementary” is typically included to allow for the eventuality that minor, unidentified issues may crop up after the legislation has been passed. In the case of the public service pensions Bill it introduces a new regime and complex new provisions, including those for the cost cap. It is wise to take this power to ensure the new provisions can be made fully workable. The powers do not allow for an unchecked alteration of members’ accrued rights nor to take powers away from the Assembly. Regulations for the employer cost cap remain subject to Assembly resolution procedure.

## **CLAUSE 14 – INFORMATION ABOUT BENEFITS**

### **Committee query**

*“Subsection (1), line 24 – Does the Department intend to table an amendment to insert ‘a’ after ‘which is’?”*

### **Departmental response**

Yes.

### **Committee query**

*“Subsection (6) – Would the Department be willing to table an amendment to require that the directions must aim to ensure that the benefit information statement is provided in such a manner so that the scheme members are reasonably able to understand it?”*

### **Departmental response**

The directions will specify requirements as to the information to be included, how that information is to be provided and also how that information is presented. The purpose of the directions will be to ensure members of all pension schemes are provided with clear and comprehensive information to enable them to understand their pension benefits. The Department view is that it is not necessary to further define the purpose of the directions for benefit statements on the face of the Bill

## **CLAUSE 23 – PROCEDURE FOR RETROSPECTIVE PROVISION**

### **Committee query**

*“Subsection (2), paragraph (b) – What is the Department’s view on an amendment to delete ‘significant’ on line 20?”*

*If the Department is not in agreement, what clarification can be provided on the test/meaning of ‘significant’ in this provision?”*

### **Departmental response**

The significance of an effect will be weighed by the Pension Boards and Scheme Advisory Boards which will be constituted of both employee and employer representatives. One interpretation might be that a *significant* effect is one that that can be appreciated or felt. Therefore an effect could be small but still significant.

### **Committee query**

*“Given that this clause also deals with ‘accrued rights’, what is the department’s view on an amendment to replace ‘with a view to reaching agreement’ with ‘ and reach agreement’ at lines 23-24 in subsection (2)?”*

### **Departmental response**

Clause 20 and schedule 7 of the Bill gives effect to the protection of accrued pension rights through the retention of the final salary link which will be made to apply for service in the old’ schemes at any point when a scheme member leaves service in the future. Retrospective powers are commonly used in public service pensions legislation to adjust schemes in line with what are often routine or permissive changes. For example, it may be necessary to adjust schemes to accommodate changes in law where it would not be desirable to delay the benefit of a particular change but where time is required to consider the consequences and appropriate method of making the change.

Clause 23 requires responsible authorities to consult with the aim of reaching agreement on pension matters. Where agreement may not be achievable the clause provides for an effective trade union veto over the change where it would have a significantly adverse effect. Trade unions will also have representation on the Pension Boards and Scheme Advisory Boards which will have be involved in determining the ‘significance’ of any adverse change. In the Department’s view the protections for accrued rights and the safeguards against adverse scheme changes in the Bill are sufficiently robust. A trade union veto on every retrospective change could compromise the capability for responsible authorities to maintain scheme rules in compliance with overarching legal and policy changes.

## **CLAUSE 36 – COMMENCEMENT**

### **Committee query**

*“What consideration has the Department given to the possibility that the commencement provision at line 29 in clause 36, subsection (3), paragraph (b) conflicts with the retrospective provision in clause 23?”*

### **Departmental response**

Having considered the matter the Department is satisfied that no conflict exists between clause 23 and clause 36. Regulations may be made so as to have retrospective effect. However, they cannot be retrospective further back than the date when the power to make the regulations was commenced. The fact that commencement orders may allow for different dates or indeed contain transitional or transitory or saving provisions provides for this.

I would be grateful if you could bring this response to the attention of the Committee.

Yours sincerely,

A handwritten signature in blue ink that reads "Judith Finlay". The signature is written in a cursive, flowing style.

**JUDITH FINLAY**  
**Departmental Assembly Liaison Officer**