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

Our Ref: CFP263/11-15

23 September 2013

Dear Shane,

At its meeting on 11 September, the Committee for Finance and Personnel, following consideration of the written submissions received from stakeholders on its call for evidence, agreed to request an urgent response from the Department on each of the issues/proposals raised.

The submissions included response papers on the Public Service Pensions Bill from:

National Association of Schoolmasters Union of Women Teachers - NASUWT
Northern Ireland Public Service Alliance - NIPSA
British Medical Association - BMA
Fire Brigades Union - FBU including NPA review paper
Northern Ireland Committee – Irish Congress of Trades Unions - NIC-ICTU
Northern Ireland Local Government Association - NILGA
Northern Ireland Human Rights Commission - NIHRC; and
NIPSA paper on the revised GAD costs.

NIC ICTU

NIC-ICTU has stated that its response is a composite of the submissions by individual trade unions. Civil Service Pensions in DFP is currently engaged in discussions with NIC-ICTU on the Collective Consultation Working Group. This group is the recognised forum for consultation on the Bill. NIC-ICTU is providing central TUS representation at the forum on behalf of the individual trades unions which represent public service employments affected by the Bill.

DFP's response to the issues raised by TUS focuses therefore on the content of the composite NIC-ICTU submission on the Bill clauses. Where additional clause comments are raised in individual submissions, these are addressed separately.

Scheme specific Trade Unions

The comments made by trade unions in respect of specific schemes, would be more appropriately discussed in the course of individual scheme level consultations with their respective trade unions. This is because the secondary legislation process will provide scope for each relevant Department and Trade Union Side to further refine scheme specific arrangements. Departmental officials for each scheme will clarify these points at the appropriate Committee evidence sessions with their respective Committees.

NILGA

NILGA is the representative body for the twenty six district councils in Northern Ireland and therefore has a direct interest in the Northern Ireland Local Government Pension Scheme (LGPS). They have made particular comment on the Bill clauses 4 to 7 relating to Governance which DFP has addressed in its response to the composite NIC-ICTU submission.

NI Commission on Human Rights

The Northern Ireland Human Rights Commission in their role of advising the Assembly whether the Bill is compatible with human rights has made observations in their submission on some of the Bill clauses which the Department has specifically addressed separately in the response to the Committee paper.

NIPSA letter re GAD Costings

The DFP response to the NIPSA paper on the Government Actuary Department, GAD, costings reiterates the point that Minister Wilson made in previous correspondence to the Chair of the DFP Committee; namely that we need to be mindful that the rationale for commissioning GAD to undertake this piece of work was solely to demonstrate that there would be a cost for any delay beyond April 2015 in implementing the Executive decision taken on 8 March 2012. References to the method of calculations therefore are irrelevant and the Union and Committee should not lose sight of the obvious issue that there will be a significant financial penalty should the deadline not be met.

Nevin Economic Research Unit Paper

In addition to comments about specific schemes, we are also at this point not responding to the "discussion note" from the Nevin Economic Research Unit on "Increasing the Retirement Age of Public Sector Workers: Effect on the Wider Labour Market". This paper was supplied by NIC-ICTU in response to the Committee suggesting to them that they provide evidence on the macro economic impact of increasing pension age. We are seeking advice from

colleagues in Strategic Policy Division, DFP and will provide this to you and the Committee in due course.

I have now attached a DFP response and would be grateful if this could be circulated to the Committee ahead of the oral evidence sessions with the stakeholders involved.

Yours sincerely,

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

JUDITH FINLAY
Departmental Assembly Liaison Officer

Departmental response to Submission of the Trade Union Side: Northern Ireland Committee – Irish Congress of Trade Unions (NIC-ICTU)

Clause 1

TUS Comment – *“What is the position in respect of other schemes e.g Ulster Sheltered Employment, NI Water and the X Border Bodies?”*

Departmental Response

The policy intention is that the provisions of the Bill will apply for all public service employments. Where there are additional bespoke schemes which provide pension arrangements for public sector employments not covered by the main categories listed at clause 1 of the Bill there is provision that these schemes may be incorporated into one of the new scheme arrangements or if this is not possible they must be reformed individually.

Ulster Supported Employment Pension Scheme

Ulster Supported Employment is mainly self funding. The organisation receives a limited amount of funds through the Department of Employment and Learning. Departmental officials are liaising with DEL to establish the approach to reform that will be applied to its pension scheme.

Northern Ireland Water Limited Pension Scheme

Northern Ireland Water Limited is classified, for the purposes of public expenditure and policy, as a Non-Departmental Public Body of the Department of Regional Development. The Northern Ireland Water Pension Scheme will therefore be within the scope of reform.

Both Ulster Supported Employment and Northern Ireland Water Limited operate funded trustee based schemes. To name these bodies at clause 1 of the Bill could legally oblige them to close their funded schemes to future accrual. Under Part IV of the Pensions (NI) Order 1995 all the liabilities in these schemes would become an immediate employer debt. This would be impracticable for these schemes and their sponsor Departments to manage.

Clause 31 of the Bill contains flexibilities for bespoke schemes for public bodies which will be subject to the reforms to be specified by Order by the Department of Finance and Personnel, and to an extended timescale where this may be required.

The effect is that the bespoke schemes for public bodies will be reformed but the option remains to accomplish this to a longer timescale. This is in keeping with the approach taken in the Westminster Public Service Pensions Act 2013 for Public Bodies in Great Britain.

North/South Implementation Bodies

The pension scheme for the North/South Implementation Bodies is legislated for under the Co-operation (Implementation Bodies) (Northern Ireland) Order

1999, made under section 55 of the Northern Ireland Act 1998. It is outside the legislative scope of the Public Service Pensions Bill to state powers to amend the schemes made for these bodies. However the Minister of Finance and Personnel and the Minister for Public Expenditure and Reform in ROI are agreed in principle that the scheme should be reformed. Officials in both jurisdictions are engaged on work to achieve this.

Clause 3(3)(b)

TUS Comment – *“The TUS would wish to see this clause amended to ensure that it cannot provide for any detrimental (Henry VIII) changes”*.

Departmental Response

Clause 3(3)(b) allows scheme regulations to include provisions that have retrospective effect (in relation to a period that precedes the regulations coming into force). Retrospective powers are common in public service pensions legislation. For example, it may be necessary to adjust schemes to accommodate changes in law or 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. The powers at Clause 3(3)(b) to make retrospective changes does not allow for an unchecked erosion of members’ accrued rights nor to take powers away from the Assembly.

Clause 3(3)(b) is subject to Clause 23 which sets out procedural requirements that apply to the exercise of the power to make retrospective provision and strengthens the processes for consultation with TUS on retrospective schemes changes which can be detrimental for scheme members and should be read in that context. Clause 23 specifies that where a retrospective provision would have significant adverse effects in relation to the pension payable to or in respect of members of the scheme, the authority must first secure the consent of representatives of the scheme’s members i.e. trade unions. Such regulations would also be subject to affirmative resolution procedure in the Assembly and the authority must also lay a report in the Assembly.

Clause 3(5)

TUS Comment – *“TUS is concerned that this provides DFP with absolute rights of veto. This is especially so for the LGPS/NILGOSC Scheme which historically as a funded scheme requires DOE approval following negotiations(sic) with the NILGOSC employers and trade unions”*.

Departmental Response

It is already a requirement of the Superannuation (Northern Ireland) Order 1972 and related existing Northern Ireland public service legislation that new secondary legislation for most of the existing public service schemes requires consent of the Department of Finance and Personnel before it can be made.

This ensures an appropriate level of accountability in the DFP role to oversee Departmental spending. DFP has a clear function to safeguard public finances. Pensions are a long term type of expenditure and liabilities cannot be suddenly cut or cancelled. Therefore it is important that there is some control on the long term potential costs of each scheme change. Departments will retain responsibility to determine future scheme designs as long as proposals remain within the scope of the Public Service Pensions Bill.

This Bill formalises requirements for scheme governance and cost control processes that will apply for all the public service schemes. It is appropriate that the DFP consent requirement is extended to all schemes, including the local government scheme. The local government scheme and the other schemes under the Bill will retain their responsibility for scheme level consultations with employers and TUS.

Clause 5(5)(c)/5(7)(b)

TUS Comment – *“This needs amending to provide that the member representatives are appointed from the recognised trade unions for the scheme via consultation with NIC-ICTU. See the submission from NASUWT regarding the context of Clauses 5 & 7, and some suggested amendments”.*

Departmental Response

Clause 5 requires that scheme level regulations provide for establishment of a Pensions Board which will assist the scheme manager in effective and efficient governance and administration of the scheme. Subsection 5(5)(c) requires the Board to include employer representatives and member representatives in equal numbers. Subsection 5(7)(b) defines member representatives as persons appointed to the Board for the purpose of representing members of the scheme and any connected scheme.

The Department is content that the provisions here are suitably constructed to describe the overall requirement for schemes to appoint member representatives to the pension board. The secondary legislation process provides scope for departments with scheme responsibilities and their TUS to further refine scheme level arrangements as appropriate in the course of their overall consultations on new scheme regulations.

Clause 7

TUS Comment – *“A question arises as to the potential for the Pension Board to also fulfil the role of the “Scheme Advisory Board”. There is no detail as to the construction of the Scheme Advisory Board, TUS would propose it should be equal numbers of employers and employee representatives and that the employee representatives be appointed in line with the proposal at 5(5)(c)/5(7)(b) above.”*

Departmental Response

Again the provisions here describe the overall requirement that scheme regulations must provide for the establishment of a Scheme Advisory Board with responsibility for providing advice to the scheme manager on the desirability of changes to the scheme. Clause 7 contains provisions which will ensure a person to be appointed as a member of the Board does not have a conflict of interest, which might prejudice the person's exercise of functions as a member of the Advisory Board.

The secondary legislation process provides scope for departments and TUS to further refine scheme specific arrangements as appropriate in the course of their scheme level consultations.

Clause 8(1)

TUS Comment – *“Delete sub-clauses (b) and (c), these must be provisions only for a defined benefit scheme”.*

Departmental Response

Clause 8 provides a broad power to create pension and benefit schemes of different designs including defined benefit and defined contribution schemes. The power is subject to the restriction that a new defined benefit scheme created under the Bill may not be of a final salary design.

The Clause allows for defined contribution schemes to be created and operate in line with the other principles of the Bill. Defined contribution schemes already exist in the public service, such as the Civil Service Partnership scheme which provides staff with choices for pension saving as an alternative to the main defined benefit scheme. There is no intention to provide defined contribution schemes instead of the CARE defined benefit schemes. It would be inappropriate to limit the options available to current and future generations of public service workers by removing these flexibilities from the Bill.

Clause 8(2) (b)

TUS Comment – *“Add after “a deferred benefits scheme” – “of a final salary basis” and delete all else”.*

Departmental Response

The Bill already protects deferred benefits staff have accrued in public service schemes and links these to final salary at whatever point a scheme member may leave service in the future. (Clauses 20, 31 and Schedule 7 refer).

Within the broad power to create pension and benefit schemes of different designs which clause 8 provides for, subsection 8(2)(b) includes provision for a defined benefits scheme of such other description as regulations made by

the Department of Finance and Personnel may specify. As outlined above the Department considers it would be inappropriate to limit options or pension choices available for future generations of public service workers. However the policy intention is that the new CARE schemes legislated for under this Bill are designed to last for at least 25 years. The Bill applies enhanced processes for TUS consultation and Assembly scrutiny which will be made to apply in the event of any proposal to change the CARE scheme design, its benefit accrual rates and the members' contribution rates, outside of the normal operation of the cost cap mechanism, within that protected period.

Clause 8(3)

TUS Comment – *“Delete”*.

Departmental Response

Clause 8(3) provides that a defined benefits scheme of ‘such other description as regulations made by the Department of Finance and Personnel may specify’ may not be a final salary scheme. This is in line with the overall policy intent to replace final salary pension schemes with models which provide a fairer benefit structure across all employees, and are affordable for the tax payer and sustainable in the long term. The CARE design was recommended by the Independent Public Service Pensions Commission as a replacement for final salary model. It is expected that for the foreseeable future all defined benefits schemes will be of the CARE type.

Clause 8(5)

TUS Comment – *“If not deleted (see 8(2) (b) comment and to read “positive resolution””*.

Departmental Response

It is considered that the negative procedure is appropriate here 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).

Also, any proposal for a change of scheme design kind which diverges from the CARE model would engage the higher protection of required at Clause 22 and so require extended consultation with TUS and a report to be laid before the Assembly. (Protected elements – Clause 22).

The negative resolution procedure allows appropriate Assembly scrutiny of the provisions of scheme regulations and the chance to debate those regulations if the Assembly wishes to do so.

Clause 9(2)

TUS Comment – *“In respect of NILGOSC a funded scheme this determination should be for DOE following consultation with the NILGOS Employers and Trade Unions”.*

Departmental Response

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.

DFP has a clear function to safeguard public finances. Therefore it is important that there is control of the long term potential costs of each scheme change.

Clause 9(3)

TUS Comment – *“This should be amended to provide only for a positive change in prices of earnings”.*

Departmental Response

This Clause provides for both inflation and deflation to be tracked. A mechanism which tracks only increases in prices and earnings but ignores deflation results in an asymmetrical sharing of risk. Where deflation occurs and this is not reflected through the revaluation of scheme benefits, the cost of the scheme would rise and this could trigger the cost cap mechanism instead.

Clause 9(5)(a)

TUS Comment – *“deletion of second clause “if... and””*

Departmental Response

This comment requests that revaluation Orders should be subject to affirmative resolution procedure in the Assembly.

The Clause provides that affirmative procedure would apply in the historically rare case where there is a negative revaluation.

For all revaluations which give effect to a percentage increase negative procedure will apply. The negative resolution procedure is considered to provide an appropriate degree of Assembly control for revaluation orders where, as is normally the case, the Order specifies a percentage increase.

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*).

Clause 9(5)(b)

TUS Comment – “*delete*”

Departmental Response

Response as per Clause 9(5)(a) above.

Clause 9(6)

TUS Comment – “*This raises issues as to the revaluation provisions in the Heads of Agreement for specific schemes e.g. teachers scheme*”.

Departmental Response

Clause 9(6) provides an overarching requirement that any gap in a person’s pensionable service of up to five years must be disregarded for the purposes so that the person’s accruals are revalued during the gap as if the person were an active member. This is to allow those persons who have taken a break from pensionable service of less than five years to be treated, for pension purposes, as if they had remained in pensionable service in the scheme.

The Bill allows scope for variance in elements of scheme design in order to accommodate different agreements between each individual scheme and its TUS. Alongside accrual rates, contribution rates (subject to cost cap mechanism), lumps sum payments and ancillary benefits one of these elements is the terms of revaluation for active members. For example, the agreed scheme design for the teachers scheme in Great Britain may be set at CPI + 1.6% where the percentage revaluation of active members’ benefits in the civil service scheme in Great Britain may be set at CPI only. These are issues which will be subject to future consultation between individual responsible Departments and their TUS for each scheme here.

Clause 10(1)

TUS Comment – “*Delete*”.

Departmental Response

Clause 10(1) provides that the normal pension age in schemes regulations made under the Bill, with the exception of those for police officers and fire-fighters, must be set at state pension age, or 65, if that is higher.

This provision was a central recommendation of the Independent Public Service Pension Commission to respond to trends in increased longevity, options for deferred retirement and increased working lifetimes, and to make public service pension provision sustainable for the long term. The overall reform policy to link scheme public service pension age was agreed by the Executive on 8 March 2012.

An equivalent provision is included in the Westminster Public Service Pensions Act 2013 under which new schemes for public servants, in England, Wales and Scotland will be created.

The NI administration would face a substantial reduction in its available funding from HM Treasury if this policy is not implemented or delayed.

Clause 10(2)

TUS Comment – *“Add “(c) member of the prison service who is a prison officer””.*

“Please note the FBU have submitted additional information regarding an amendment to this clause”.

Departmental Response

Prison Officers

The Independent Public Service PensionS Commission recommended that members of the armed forces, police officers and firefighters should have pension age set at 60. The Commission did not recommend concessions to the general policy for linking scheme pension age to state pension age for any other public service employment. In Northern Ireland separate schemes currently exist for both police officers and firefighters. Prison Officers in Northern Ireland are members of the existing pension scheme for the Northern Ireland Civil Service and since 2007 new prison officers already have a pension age of 65.

In the course of consultations in Great Britain on the new Civil Service scheme design which will be made under the Westminster Public Service Pensions Act 2013 the Government made an additional offer to prison officer unions. The offer would have allowed operational prison staff to retain their current pension ages for future service without significantly higher taxpayer costs, nor a detrimental effect on other civil service staff. The offer was an additional measure on top of the transitional protections provided in the Westminster Act which already mean that those officers within 10 years of their current pension age will have their accrued and future pension rights protected until they leave service.

The Prison Officers Association which is the largest union in the United Kingdom representing Uniformed Prison Grades chose to reject this package.

Firefighters

The Fire Brigades Union proposes an amendment to Clause 10(2) of the Bill so that the requirement for a normal pension age of 60 for firefighters is removed and replaced with a requirement that normal pension age for firefighters should be 'set out in scheme regulations but must be no more than 60'. The Union states that this is the way in which the normal pension age is set at the moment, and does not change the status quo.

The Public Service Pensions Bill introduces a new framework which will apply for all public service pensions and it has been designed to change the status quo based on the recommendations of the Independent Public Service Pensions Commission. The Westminster Public Service Pensions Act 2013 sets a pension age of 60 for firefighters for the schemes that will be created under that Act.

The current pension age for firefighters recruited from 6 April 2006 is set out in the New Firefighters' Pension Scheme Order (Northern Ireland) 2007 (NFPS). These regulations already specify a normal pension age of 60. Therefore the proposed amendment to the Bill would represent a regressive change to the current status quo.

The Department of Communities and Local Government Firefighters' Pension Committee undertook a review of normal pension age for firefighters and published a report in January 2013.

The report recommended that fire and rescue services should consider informing applicants at recruitment that those whose fitness is close to a pre-determined threshold are unlikely to maintain fitness to normal pension age unless they are able to increase their level of physical activity and/or reduce their body mass index and that fire and rescue services should conduct regular fitness assessments for all firefighters to ensure fitness for role is maintained.

The report did not recommend a change to the current pension age of 60. It recommended the next review of pension age should be undertaken once fitness standard(s) have been determined and sufficient data have been collected to measure the effect of implementing these standards. The report states that it is unlikely that the review will have sufficient data until at least 2016.

It is appropriate that full consideration should be given to issues of public safety connected with the provision of the fire and rescue services. This review considered available evidence on factors which may be shown to diminish an individual's ability to meet the occupational demands and fitness standards of the job. There is an obvious public safety concern where the fitness standards recommended by the Communities and Local Government Firefighters' Pension Committee are not met.

There will be firefighters currently in service who expected to retire at age 55. A proportion of this group will fall under the transitional protection category and will see no change in their expected pension age. There will be others

who will have difficulty maintaining fitness to normal pension age of 60. The Firefighters' Pension Committee report made recommendations for terms for early payment of pension benefits to be incorporated in scheme regulations to accommodate cases where scheme members may leave service before the pension age as a consequence of failure to meet the required fitness standards. For example the report recommends that "Firefighters over the age of 55 who can no longer meet the fitness requirement could be allowed to leave early on an actuarially reduced pension. The pension should be calculated so there is no overall financial advantage or disadvantage to the firefighter (or to the pension scheme) from the member leaving before the NPA". (Normal Pension Age for Firefighters - A review for the Firefighters' Pension Committee - December 2012)

The Public Service Pensions Bill provides for scope at secondary legislation to incorporate variances in scheme design in the case of firefighters who may not meet the required fitness standards and leave service early.

These issues will be discussed in consultations with TUS at the secondary legislation stage for the firefighters scheme.

Clauses 10(3), 10(4) & 10(5) (c)

TUS Comment – *"Delete"*

Departmental Response

These subsections of Clause 10 are consequential of the main provision at Clause 10(1) which is dealt with above.

Clause 11(2)

TUS Comment – *"How does DFP intend to consult with the Pensions Boards, Scheme advisory Boards and in particular recognised trade Unions given the importance and potential implications of actuarial valuations"*.

"The question also arises to the role of DFP in the LGPS/NILGOS Scheme, especially on view of the separate scheme actuary".

Departmental Response

Subsection 11(2) requires that a valuation for a scheme made under the Bill must be carried out in accordance with directions given by the Department of Finance and Personnel.

These directions will include procedural matters for how valuations should be carried out, including:

- how and when the valuation is to be carried out;

- the time periods over which a valuation will measure a scheme's assets and liabilities;
- the data, methodology and assumptions to be used in valuations;
- the matters that must be covered by the valuations (which may relate to the outputs that must be produced);
- how valuations of new and connected schemes will be combined, where they are to be valued together; and
- the time period for implementing changes to the employer contribution rate as a result of the outputs of the valuation.

It is unlikely that the scheme level Pension Boards and Scheme Advisory Boards will be functional prior to the valuation directions. There is no specific requirement to formally consult with the Pension Boards and Scheme Advisory Boards which will be created under the Bill on directions for scheme valuations. The Department is required to consult with the Government Actuary prior to making directions for scheme valuations.

The Department of Finance and Personnel is currently co-ordinating consultations with Departmental representatives with responsibility for the schemes which will establish the Pension Boards and Scheme Advisory Boards in scheme regulations made under the Bill. Discussions are ongoing at both the 'Public Service Pensions Bill Working Group' which was created to ensure the content of the Bill adequately reflects policy scheme requirements for each scheme, and the 'Northern Ireland Public Service Pensions Group' which is co-ordinated by the Department as an inter-departmental forum for consideration of the scheme level impacts of the Bill. Discussions on directions for scheme valuations are a feature of the work of both these groups.

The Department has been consulting with TUS on the Collective Consultation Working Group since February 2013. This group is the recognised forum for consultation on the Public Service Pensions Bill. NIC-ICTU is providing central TUS representation at the forum on behalf of the individual trade unions which represent public service employments affected by the Bill. The issue of directions for scheme valuations has been a feature of discussions at this forum and has been tabled as an agenda item for the next meeting of the Group on 1 October 2013.

Departmental representatives for the Local Government Pension Scheme are represented at each meeting of the Public Service Pensions Bill Working Group and the Northern Ireland Public Service Pensions Group where these issues are discussed. Representatives from the Local Government Pension Scheme Management Side and TUS side are represented at the meetings of the Public Service Pensions Bill Collective Consultation Group.

Clause 11(4)

TUS Comment – “*To what view is the consultation with GAD given vis-à-vis consultation with others, especially when the norm is for DFP to ignore the views of consultees contrary to Lord Woolf’s Judgement in Rv North and East Devon Health Authority and the Assembly’s research Paper NIAR 246-12, 27/4/12*”.

Departmental Response

The Department of Finance and Personnel is required to consult with the Government Actuary prior to making directions for scheme valuations. These consultations will focus on the procedural matters outlined.

The Case Law cited by TUS in the “Woolf” judgement concerns 4 principles “The Gunning Principles” which are taken to set a benchmark for effective consultation. The Department has conducted its currently ongoing consultations on the Public Service Pensions Bill in the spirit of these principles.

The 4 principles and a summary of how the Department’s approach has addressed each are as follows:

consultation must be undertaken at a time when proposals are still at a formative stage;

DFP initiated contact with trade unions on 3 January 2013 and advised that it was its intention to engage fully with appropriate trades unions on policy consultation. The first meeting of the Group took place on 14 February 2013. These engagements are ongoing on a monthly basis.

sufficient reasons must be put forward for the proposal to allow those consulted to give intelligent consideration and an intelligent response;

DFP provided a formal consultation document to TUS, which contained detailed information on the purpose, background, core provisions, affected schemes and Departments, and the way forward. The Department has also provided additional information and scheme data in response to TUS follow up requests in writing and at each meeting of the Collective Consultation Group for the Bill.

adequate time must be given for this purpose,

The consultation period for policy content of the Bill continued for 12 weeks - in accordance with OFMDFM guidance. DFP has also followed through on its undertaking, at the Collective Consultation Working Group to continue to consult with TUS prior to and during the legislative passage of the Bill. It is therefore considered that the Department’s approach provides for adequate time.

the product of consultation must be conscientiously taken into account when the ultimate decision is taken.

The Department has considered the TUS response to the public consultation, and the official response to the consultation addressed each of the issues raised to date by TUS. The Department continues to follow up and respond to issues raised by TUS in the course of the work of the Collective Consultation Group.

Clause 11(5)

TUS Comment – *“Delete”*

Departmental Response

This subsection provides that scheme regulations for a scheme which is not a defined benefits scheme may provide for actuarial valuations to be made of the scheme. It reflects the overall policy to formalise processes for valuations for schemes made under the Bill and the power at Clause 8 to create pension and benefit schemes of different designs including defined benefit and defined contribution schemes. As explained earlier in this response defined contribution schemes already exist in the public service as an option. There is no intention to provide defined contribution schemes instead of the CARE defined benefit schemes.

Clause 12(3)

TUS Comment – *“This should not cover the NILGOS scheme. The issue also arises of how costs are dealt with that arise as a consequence of the employer/DFP/GAD/HMT actions e.g.*

- (i) Increase in ill-health retirements due to increasing the age of retirement;*
- (ii) HMT earnings growth projections; and/or*
- (iii) Changes to the Discount rate.”*

Departmental Response

The employer cost cap is an integral part of the new provisions to set consistent standards for processes for scheme governance and cost control across each public service schemes made under the Bill. This consistency of approach was a recommendation of the Independent Public Service Pensions Commission. DFP has a clear function to safeguard public finances. This provision ensures an appropriate level of accountability to the DFP role to oversee Departmental spending and improves transparency and accountability.

The cost cap mechanism is intended to control all of the cost risks associated with the new pension schemes. Only those changes which directly relate to

members, such as changing expectations about life expectancy, salary growth or career paths, will be included in the cap mechanism.

Clauses 12(4), 12(5), 12(7), 12(8)

TUS Comments – *“taking account of 12(3) how will DFP consult stakeholders (see 11(2))”*;

12(5) – “Amend taking account of 12(3) and 12(4)”;

12(7) – “There is no reference to protections for members”;

12(8) – “Amend taking account of 12(3), 12(4), 12(5), and 12(7)”,

12(9) – “Amend to affirmative resolution”.

Departmental Response

The Department’s general approach to consultation with stakeholders on directions is outlined elsewhere in this response above. This approach will also apply for directions made by the Department under Clause 12.

In addition Subsection 12(5) requires the Department of Finance and Personnel to make regulations to determine how the cost cap will operate. The Department will undertake formal consultation with TUS on the content of these regulations and they will be subject to the scrutiny of the Assembly under the negative resolution procedure.

Subsection 12(7) provides that options available to address changes in scheme costs where margins for the scheme cost cap are breached may include an increase or decrease in member benefits of contributions.

The cost cap mechanism is intended to control all of the cost risks associated with the new pension schemes. Only those changes which directly relate to members, such as changing expectations about life expectancy, salary growth or career paths, will be included in the cap mechanism. The cap arrangements will be symmetrical, so that if costs fall below a certain threshold, the savings will be used to the benefit of scheme members. There will be a process of consultation to allow scheme managers, employers and TUS to reach agreement on how the scheme costs will be returned to the level of the cap.

The protections referred to by TUS relate to the protected elements described at clause 22 of the Bill. As pointed out previously the Bill applies enhanced processes for TUS consultation and Assembly scrutiny which will be made to apply in the event of any proposal to change the CARE scheme design, its benefit accrual rates and the members’ contribution rates within 25 years, but makes clear that this applies only outside of the normal operation of the cost cap mechanism provided for at Clause 12.

Subsection 12(9) provides that regulations made by the Department of Finance and Personnel under Clause 12 are subject to the negative resolution procedure in the Assembly. The negative resolution procedure provides the scope to debate those regulations if the Assembly wishes to do so.

Clauses 13(3)

TUS Comment – *“Clarity is needed with regards to the NILGOSC Scheme that the Actuary will only be the Scheme’s Actuary and not GAD or another DFP and/or DOE appointed Actuary”.*

Departmental Response

Subsection 13(3) provides that scheme regulations must require the pension fund to be subject to actuarial valuation. Provisions in the scheme regulations will require the actuary for the scheme to set the employer contribution rate for the pension fund.

The valuation of the pension fund is separate from and in addition to the valuation of the whole scheme under Clause 11.

Clauses 13(6) (c) (ii)

TUS Comment – *“For NILGOSC this needs to be clarified so as to refer to the NILGOSC Committee”.*

Departmental Response

The Department is content that the provisions here are suitably constructed to describe the overall requirement for the scheme manager for the local government scheme to take the appropriate remedial steps which may be recommended in the report on the valuation which is a requirement of Subsection 13(4).

Clause 14(2) (b)

TUS Comment – *“DFP should be required to consult with all key stakeholders on the “directions””.*

Departmental Response

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.

The power is considered appropriate for directions 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.

The Department will consult with all relevant stakeholders on the Public Service Pensions Working Group, the Northern Ireland Public Service Pensions Group and the Collective Consultation Group for the Bill, prior to the finalisation of directions.

Clause 15(3)

TUS Comment – *“As with 14(2)(b)”*.

Departmental Response

As with 14(2) (b) this is dealt with in the Departmental response above.

Clause 18(4) (a)

TUS Comment – *“There is an issue in respect of the term “closing date” as this could result in the scheme having to make good the deficit”*.

Departmental Response

The “closing date” is the final date for accrual under the current pension arrangements. The subordinate legislation for the Local Government Pension Scheme will make provision to ensure that membership is continued under the new arrangements and protect membership accrued before 1 April 2014. The subordinate legislation will also make provision for the continuation of admission agreements for employers in the LGPS to avoid any cessation valuations being triggered.

The current Local Government Pension Scheme (Northern Ireland) is a statutory scheme made and amended by the Department of Environment under primary legislation in Article 9 of the Superannuation (Northern Ireland) Order 1972. It differs from the funded public body schemes dealt with at Clause 1 of the Departmental response which could be at risk of incurring an immediate employer debt if forced to close. The Department of Environment has statutory authority to amend the Local Government Scheme. The funded scheme for other bodies is set out in trust deeds and a number of trustees are responsible for the scheme. The trustees are the only people who can amend the trust deeds.

Clause 18(5) (a)

TUS Comment – *“The date should be amended to 1 April 2015 or later if the new scheme is deferred to post April 2015”*

Departmental Response

The Coalition Government's projected savings for its programme of pension reform is based on an effective date of 1st April 2012 for these transitional protections. If we deviated from this date, this would result in increased costs for pensions and a corresponding financial penalty from HM Treasury.

Clause 21(1)

TUS Comment – *“As pensions are deferred pay this should provide for negotiations with TUS. The consultation reference should be “with a view to reaching agreement” and be cognizant of the requirements of consultation”.*

Departmental Response

The Bill makes a commitment to the protection of pension benefits already accrued in the existing public service schemes.

However the pension arrangements that will apply for the future cannot be classified as deferred pay or as a matter for collective bargaining. While "Negotiation" may be used in the context of collective bargaining and pay, "Consultation" is the term that is used in pension legislation and this is correctly reflected at Clause 21(1) which deals with the requirements for consultation with TUS before making scheme regulations.

The Department of Finance and Personnel's approach to requirements of consultation has been outlined previously in this response.

The current procedures for making changes to current public service pension schemes vary from scheme to scheme. Under the Bill all future scheme changes will be made in regulations which will be subject to negative resolution procedure in the Assembly and which affords an appropriate level of Government scrutiny to ensure the proper consultation on scheme level changes has been completed.

Clause 23(1)

TUS Comment – *“Delete, there should be no scope for retrospective changes (Henry VIII)”.*

Departmental Response

Clause 23 sets out procedural requirements that apply to the exercise of the powers in the Bill to make retrospective provision. The Clause is designed to strengthen the processes for consultation with TUS on retrospective schemes changes which could be detrimental for scheme members. The power to make retrospective changes does not allow for unchecked erosion of members' accrued rights nor to take powers away from the Assembly. Retrospective powers are common in public service pensions legislation. For

example, it may be necessary to adjust schemes to accommodate changes in law or 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 specifies that where a retrospective provision would have significant adverse effects in relation to the pension payable to or in respect of members of the scheme, the responsible authority must first secure the consent of representatives of the scheme's members i.e. trade unions. Such regulation would also be subject to affirmative resolution procedure in the Assembly and the responsible authority must also lay a report in the Assembly.

Clause 24(1) (c)

TUS Comment – *“All schemes would wish to have the privileged position given here to holders of Judicial office”.*

Departmental Response

The provisions at Subsection 24(1)(c) specify that scheme regulations for a scheme relating to holders of judicial office will be subject to negative resolution in cases where the regulations are deemed to be minor or wholly beneficial to members. This is the same process applying in general for non detrimental scheme regulations for the other public service employments covered by the Bill. In other cases e.g. where there may be detriment to members the regulations would be subject to the affirmative procedure.

The Bill makes provision for the Department of Justice to make pension regulations for schemes for Judicial Offices should this be required in the future. However the current position is that the Department of Justice does not make scheme regulations for Judicial Offices and the majority of Judicial Offices have pension provision in regulations made by the Ministry of Justice in Great Britain. Clause 24(1)(c) replicates the provisions for parliamentary control for regulations for Judicial Offices that apply in the Westminster Act, to cover the eventuality that they may be required in the future. There is no immediate impact.

Clause 25

TUS Comment – *“This may be the appropriate clause to provide for a revised “fair Deal” provision on the face of the Bill (to include ABS in the NILGOSC Scheme)”.*

Departmental Response

Fair Deal has always been a non-statutory policy applying to pension provision for public sector staff in circumstances where their employment is compulsorily transferred to a non-public sector employer. It currently requires that the new employer provides a broadly comparable pension scheme for the

transferred staff and bulk transfer arrangements for those staff who wish to transfer their public service pension benefits. The New Fair Deal policy will be modified to provide that staff whose employment is transferred can retain membership of their public service pension scheme.

Clause 25 contains provisions to facilitate the new Fair Deal policy by enabling each Department with scheme responsibility to extend access to the public service pension schemes to appropriate groups or individuals who would not normally be eligible for the scheme, such as members who are compulsorily transferred out to the private sector.

It should be noted that while Fair Deal is a non-statutory policy, it is normal for elements of the resulting pension provision to be reflected in the outsourcing contractual arrangements. This approach has worked for Northern Ireland to date.

Clause 26

TUS Comment – *“Delete, to enhance scheme sustainability there should be no scope to bolster private pensions”.*

Departmental Response

This Clause allows scheme managers and employers to make payments towards the provision of pensions and other benefits that are not delivered through a scheme made under Clause 1 for persons who could have access to such schemes (specifically, both the class of persons described under clause 1 (2) and persons to whom a scheme has been extended under Clause 25). This will enable employers to contribute to private occupational pension schemes where: members of public service schemes wish to take out or retain private occupational pensions in addition to (or instead of) being members of public service schemes (such as the Northern Ireland Civil Service Partnership Scheme).

As is the case in the powers in Clause 8 of the Bill for provision of alternative scheme choices there is no intention to provide such arrangements instead of the CARE defined benefit schemes.

Clause 28(2)

TUS Comment – *“Delete, there is no justification for a NILGOSC April 2014 implementation date”.*

Departmental Response

Reform of the Local Government Scheme will be brought into force one year earlier than the other major public service schemes. This will enable the Department of Environment to bring forward savings from reform earlier as agreed as an alternative to increased employee scheme contributions which have been a feature of the other public service schemes since April 2012.

The secondary legislation for the Local Government Scheme will be drafted to comply with the core provisions of the proposed Assembly Bill on the basis of the Executive's decision of 8 March 2012 to implement reforms in line with those for the equivalent schemes in Great Britain. The future scheme regulations will be required to comply with the final content of the Assembly Bill following its legislative passage.

Clause 30(3)

TUS Comment – *“There will be a requirement to consult the TUS”.*

Departmental Response

Subsection 30(3) requires that new public body pension schemes, and any variation to the rules of the schemes will require the consent of the Department of Finance and Personnel. Clause 30 identifies the provisions of the Bill which apply to new public body pension schemes. These provisions ensure that such schemes contain the same core design, cost control and governance features of the schemes established under Clause 1 and the requirement for consultation associated with these provisions.

Northern Ireland Human Rights Commission Submission

The Commission expresses concerns over the legal certainty of Clause 23 of the Bill which permits retrospective application.

Accrued pension entitlements indeed do fall within the scope of 'possessions' for the purpose of Article 1 of Protocol 1 of the European Convention on Human Rights. It is not a contentious issue and the Department is aware that retrospective provisions in scheme regulations will not necessarily impede on the accrued pension entitlements and in the main the provisions could actually have a neutral or indeed positive effect on the member's entitlement.

Subsection (3)(b) allows scheme regulations to include provisions that have retrospective effect (in relation to a period that precedes the regulations coming into force), subject to Clause 23 (which sets out procedural requirements that apply to the exercise of the power to make retrospective provision). Such powers are common in public service pensions legislation. For example, it may be necessary to adjust schemes to accommodate changes in law or 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.

Subsection (3)(c) power is part of an enabling provision to make scheme regulations and has no effect on the rights of the individual. If scheme regulations containing retrospective provision were introduced dependant on the power, the regulations would set out the make up of the outcome on the rights of the scheme member. The Department considers therefore that it is the terms of such scheme regulations that would have to be assessed against the requirement for legal accessibility and foreseeability rather than the enabling power. In other words, the extent to which the requirement that the conditions of any restriction be provided by the regulations, which, until exercised, has no effect upon the rights of the member, but at the terms of any order made under it.

Clause 23 provides a procedure to be followed when retrospective provisions are included within scheme regulations proposed by the relevant authority.

Subsection (1) provides that where such retrospective provisions 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, the authority must first obtain the consent of those who appear likely to be affected, either directly or through their representatives (*subsection (3)*).

Subsection (2) provides that where the retrospective provisions appear to the responsible authority to have significant adverse effects in any way not covered by subsection (1) in relation to the members of the scheme (for example, a serious adverse effect on injury benefits as opposed to pension benefits), the authority must first consult those who appear likely to be affected, either directly or through their representatives, with a view to reaching agreement.

Subsection (4) requires that where subsection (1) or (2) applies the responsible authority must lay a report before the Assembly (as defined in Clause 22(5)).

These robust processes ensure further scrutiny by the Assembly as retrospective provision is to be subject to the affirmative procedures.

Clause 9 deals with the procedure for revaluing the earnings of active members of pension schemes made under clause 1, where those earnings (or a proportion of those earnings) are used to accrue pension benefits. It relates to the revaluation of the accrued pension of active members of schemes and not the uprating or indexation of pensions that are deferred or in payment (for the Pensions (Increase) Act (Northern Ireland) 1971, and the consequential amendments in Schedule 8 to the Bill). Its purpose is to provide for such revaluations to be conducted on a consistent basis across the public service with regard to choice of index and the period. DFP has a clear function to safeguard public finances. Therefore it is important that there is control on the long term potential costs of each scheme change.

Clause 9(3) provides for both inflation and deflation to be tracked. A mechanism which tracks only increases in prices and earnings but ignores deflation results in an asymmetrical sharing of the risk.

For all revaluations which give effect to a percentage increase negative procedure will apply. The negative resolution procedure is considered to provide an appropriate degree of Assembly control for revaluation Orders where, as is normally the case, the Order specifies a percentage increase. Similar procedures apply to the regular uprating of benefits.

Clause 10 provides for the normal pension age and deferred pension age of members of most public service pension schemes to be the same as their state pension age, or 65, whichever is greater. This will not apply to firefighters or members of the police service, whose normal pension age will be 60.

The Department can justify the change in pension age for firefighters and police for the following reasons:

The current pension age for both firefighters and members of the police schemes recruited from 6 April 2006 is set out in the New Firefighters' Pension Scheme Order (Northern Ireland) 2007 (NFPS) and the New Police Pension Scheme 2006. These regulations already specify a normal pension age of 60. Firefighters and police recruited before 6 April have an earlier pension age. However, members of this group who are within 10 years of their pension age as at 1 April 2012 will have transitional protections and should see no change in their current arrangements until they leave service.

GAD Costings: NIPSA Letter 13 June 2013

Firstly, it is extremely important to reiterate the point that Minister Wilson indicated in his previous letter of 17 May 2013 to the Chair of the DFP Committee that we need to be mindful that the rationale for commissioning GAD to undertake this piece of work was solely to demonstrate that there would be a cost for any delay beyond April 2015 in implementing the Executive decision taken on 8 March 2012.

Bullet Point 1

The annual cost in the long term of not implementing the proposed reforms for each scheme assumes if all aspects of reform are delayed by 1 year, which includes both the date of implementation of the new scheme and transitional arrangements where the members within 10 years of pension age in April 2013 were protected plus a 3-4 taper then the cost relative to implementation in 2015 for the schemes would be, broadly £300 million. As indicated in the GAD paper this figure is a capitalised cost but includes the cost of additional accrual in 2015/16 and for the following seven years for the additional members who would be protected. Hence, the long term assumption deals with the estimated annual recurring cost attributable to delay or non implementation of the required reforms from April 2015.

Bullet Point 2

GAD has clearly stated that the calculations carried out are approximate and are not based on detailed membership data as there are outstanding issues in relation to specifics around scheme valuation directions and the review of demographic assumptions yet to be clarified. Therefore, given the approximations underlying the calculations, there is a risk of spurious accuracy in quoting a more detailed figure than one rounded to the nearest £10 million.

Bullet Point 3

HMT have never clarified whether they would seek to obtain the money over the period 2015/16 to 2022/23 or entirely in 2015/16. However, by way of example during the programme for increased member pension contributions in the case of a shortfall of £180,000 which was identified in one of the Northern Ireland schemes, due to a slower rate of the increase implementation, HM Treasury immediately requested the shortfall be rectified and the outstanding amount was quickly recovered. Therefore, based on this model it is likely that the latter would apply.

Bullet Point 4

The £300m quoted does include the assumption that transitional protection would also be shifted back by a year (i.e. the cut off date becomes 1 April 2013 rather than 2012 etc). You will note that GAD did offer to provide calculations based on the transitional protection being locked at 2012 as it is

now. The Department did not request this calculation or indeed any further calculations. The Department agreed the request by the trade union representatives of the Collective Consultation Group and the subsequent request by the Chair of the DFP Committee to the then Minister of Finance and Personnel to calculate the estimated savings from the proposed reforms in relation to each of the relevant local schemes. The cost for GAD to undertake this further exercise for the other Northern Ireland schemes has cost the Department £28,000 to date. This is in addition to the £9,100 paid for the initial costing based on the Health scheme only. Departmental officials have made it very clear both at officials meetings with Trade Union Sides and at DFP Committee evidence sessions that the Department is not prepared to allocate any further resources to GAD costings particularly when the exercise was originally to point out a substantive cost to the NI block which has been clearly indentified.

Bullet Point 5

Again, the point needs to be made that even if there is a possible range of £250m- £350m and even if the costings were indeed at the lower end of the range; the end result would still be that any divergence from the general deadline of 1 April 2015, will incur a significant financial impact on the block allocation. If the estimated cost range is £250m to £350m this still illustrates a massive and unacceptable cost associated with retaining pension arrangements for public servants in Northern Ireland which are more generous and more costly for the taxpayer than those provided for public servants in the United Kingdom generally.

Bullet Point 6

Some of the work completed by GAD was identifying the costs based on the financial assumptions set out in the HMT draft valuation directions in June 2013. The GAD figures used 4.25% for the earnings increase whereas the current draft of HMT Directions now specify that 4.75% is the earnings assumption to be used in the long term. In other words after 2018 which is well after the period for which pay policy has been set. Therefore, it makes sense to use the same assumption for all schemes. Conventionally, the long term earnings assumption is derived from the long term GDP forecast. Had an earnings figure of 4.75% been applied at the time that this estimate was prepared; the outcome would have been a figure significantly higher than £300 million.

The valuations already contain a long term GDP forecast, since the discount rate $-CPI + 3\%$ is equal to GDP growth from the OBR's November projections when the discount rate was set. The figures used by GAD have been calculated using this new "SCAPE" discount rate set by Treasury in 2011. So for consistency, it makes sense to use the same projections for the long term earning assumptions. GAD therefore assumed 4.25% earnings growth although it is recognised that this is higher than the current growth rate. Using the 4.25% rate (now estimated at 4.75%) ensured that the earnings assumption used to project the cost of future payments is consistent with the discount rate used to express those earnings in current terms. Using the

current figure would create an asymmetry in the methodology and lead to perverse outcomes.