FDA

April 2013

Annex

NI Pensions Bill

This briefing outlines the key areas where the FDA believes changes are necessary to make the proposed NI Bill fit for purpose:

1. Provision for an independent review of the SPA link;
2. Provision to ensure maintenance of membership in public service pension schemes for transferred workers;
3. Removal of the right for Treasury to reduce accrued benefits (make retrospective changes);
4. Removal of the provision for 'negative revaluation' of CARE;
5. Introduction of the new scheme by amendment to current regulations rather than 'closure';
6. Improvement to the rights to consultation and consent to reflect current provisions in Superannuation Act 1972;
7. Removal of the clause (23 in the Bill as introduced) that allows employers to bypass public service pension schemes altogether;
8. Removal of Treasury control over all elements of schemes without requirements for proper consultation and very little Parliamentary scrutiny.

1. **Provision for an independent review of the link between NPA/DPA and SPA**

In his extensively cited report, Lord Hutton stated (Recommendation 11) that the link between receipt of unreduced benefits on retirement – the Normal and Deferred Pension Ages – and State Pension Age should be regularly and independently reviewed to ensure the link is appropriately tracking changes in longevity (Final Report 4.20). This provision also forms an explicit part of the Agreement reached over the Civil Service Pension Scheme changes.

This review is not provided for in the Bill which could well mean that the viability of schemes and the efficiency of provision is put under threat through adherence to a fixed link. If longevity does not match the changes to SPA that result from the other reforms government have signalled, then there are substantial consequences for the cost of schemes. Whether this cost volatility is borne by taxpayers or scheme members, the inadvertent impact could be devastating for the new schemes. An independent review, as recommended by Lord Hutton could ensure that the intention of the provision (for pension age to increase as longevity improves) is actually delivered.

2. **Provision to ensure maintenance of membership in public service pension schemes for transferred workers**

The Chief Secretary has committed to both the retention of the current 'Fair Deal' provisions that provide some protection for public sector workers who are outsourced, and the extension of these provisions to all transferring staff. The Bill enables this to occur in the Civil Service (Schedule 9) but there is no provision giving legislative certainty to the Chief Secretary's commitment.

The FDA believes it is appropriate for this commitment to be on the face of the bill by means of a clause setting out that all compulsorily transferred staff will retain membership of their public service pension scheme. The exact mechanism to deliver this can then be a matter for scheme regulations as would be expected in an 'Enabling Bill'.

3. **Removal of the right for Treasury to reduce accrued benefits (make retrospective changes)**

In facilitating the ability of scheme regulations to make retrospective changes, the Bill threatens to override one of the central tenets of pension saving: that what you've accrued is safe. This is embodied in s67 Pension Act 1995 for private sector pension savers but protection for

public service workers comes from the European Convention on Human Rights. The Explanatory Notes to this clause suggest that its purpose is to allow scheme regulations to be altered retrospectively in the interest of efficient implementation where provision couldn't be made in a timely manner. If that is the case then this clause should more accurately reflect the stated intention. The wording of other clauses (in particular s20) indicates that in fact this power is deliberately broad intended to allow any change to scheme members' past or future benefits.

While the Explanatory Notes suggest that the Bill sets out a high hurdle to further radical change consistent with the Chief Secretary's statement to the House on 20th December 2011, the reality is that the protection only extends as far as requiring consultation with a view to reaching agreement and a report in certain circumstances to be placed in the House. This in no way precludes radical changes to schemes in the context of the employer cost cap [s11] which has a blanket exemption from even these minimal provisions [s20(6)]. In drafting the provisions in this clause relating to retrospective changes may have been inserted in order to allay the concerns discussed in Clause 3 above. However, the provisions are very weak and do not actually result in a 'high hurdle' for changes. As a basic concern, the provisions do not cover what could be radical changes to the schemes such as definitions of pensionable pay, eligibility or survivor benefits. In order to set a higher barrier, the Bill should replicate the strength of provision used to preclude the introduction of final salary schemes [s7(3)].

There is clear provision in the Bill to allow scheme regulations to provide for the reduction of accrued benefits as part of the employer cost cap. This is a fundamental breach of scheme members' rights under Article 1 Protocol 1 of the ECHR. Pensioners in receipt of their public service pensions could also have their benefits reduced leaving them reliant on state benefits regardless of the fact that they will have paid all the employee contributions required of them while in the scheme. The Bill does not stipulate that it is only active or active and deferred members' benefits that can change, use of 'members' applies to all members of a section 1 scheme.

4. Removal of the provision for 'negative revaluation' of CARE

The wording of the Bill does not reflect the discussions with unions on revaluation and seeks to extend Treasury's control far beyond that which is necessary, prudent and, in light of FDA and Others -v- The Secretary of State For Work and Pensions and Others [2012] EWCACiv 332, legal.

There is no need for this clause to be in primary legislation as it is better suited to the scheme regulations that will lay down the parameters of

each distinct scheme. There is no similar clause setting the terms of the indexation of pensions in payment even though that element is consistent across all schemes.

Fundamental to the agreement reached in the Civil Service was the understanding that, as with the indexation of pensions in payment, revaluation would never be negative. If the relevant index was negative (as has been the case in recent history) then the figure of zero is used and there are no increases, or decreases, applied. This is vital to the confidence of pension saving. Just as pensions in payment should not fall from one year to the next – a principle held to be successive governments – so pensions being accrued should similarly not be reduced. This reflects the existing practice for nuvos – the current CARE scheme in the Civil Service where revaluation either involves an increase if CPI is positive or a freeze if CPI is zero or below. The FDA were not informed at any stage that government intended to deviate from this approach in the new scheme and to do so now is a fundamental challenge to our members' agreement.

Continued inclusion in the Bill of a provision allowing negative revaluation to occur could have a profound effect on member behaviour, specifically opt outs. Scheme members are likely to react to an announcement that their whole pension is to be revalued downwards (ie cut) as a result of a negative figure for the consumer price index in September. Their response is likely to be one of mass opt out. This is a hugely counter-productive approach for Treasury to take on the pretext of 'sharing risk'. The cost management mechanisms already account for inflation yet Treasury wants additional cost to be accepted by members through this provision which puts participation at risk.

5. Introduction of the new scheme by amendment to current regulations rather than 'closure'

There remains a serious lack of clarity on how this clause (s16) is to operate. It appears that all members of existing pension schemes will be deferred albeit with a provision for a final salary link described in Schedule 7. This would cause significant communications problems (telling members they are being thrown out of the scheme they have been saving in, potentially for decades). It also raises questions about HMRC rules on benefit crystallisation as well as concerns over the calculation of transfer values, access to accrued rights in ill health, redundancy or other early retirement and the provision of benefits to survivors in the event of a member's death. None of these issues have been discussed or appear to be considered in the drafting of this Bill.

An alternative approach that has been suggested is that instead of becoming deferred, active members of existing schemes will remain active members of those schemes but will not build up any more service and will not contribute to those schemes. They will however, also be active members of the new schemes into which their contributions will go. Many of the issues set out above would still apply in this situation.

Treasury has sought to clarify the situation in debate but this is not sufficient security for members. The practical considerations of this approach for continuity of service and contractual arrangements continue to be undiscussed.

6. **Improvement to the rights to consultation and consent to reflect current provisions in Superannuation Act 1972**

The obstacles to making radical, adverse changes are actually weaker in this Bill that currently exist in the Civil Service and some other public service schemes where s2(3) and s12 of the Superannuation Act 1972 require consent from members for such detrimental changes. Government are removing those provisions and introducing lesser protections which amount to little more than an obligation to inform.

This runs contrary to the pronouncements of the Chief Secretary and others who have stated that a 'high hurdle' is to be put in place by this Bill to further radical change for 25 years.

7. **Removal of the clause (23 in the Bill as introduced) that allows employers to bypass public service pension schemes altogether**

This clause opens the door for employers to bypass public service pension schemes completely. Simply by citing this clause any employer who would otherwise have to provide access to a s1 scheme could, it appears, decide to choose to make other provision, for example the basic auto-enrolment level defined contribution provision outlined in Pensions Act 2011.

There is no obvious need for this provision, if it is to address a particular anomaly, then it would seem more sensible to address those issues directly. As currently set out this clause seems to allow departmental discretion for departments to create individual remuneration packages for employees which are neither consistent with other civil servants nor transparent to the public.

8. **Removal of excessive Treasury control over all elements of schemes from valuations to all scheme regulations without any requirements for proper consultation and very little Parliamentary scrutiny**

The Bill effectively takes away the ability of the Secretaries of State responsible for schemes – the 'responsible authorities' to manage the valuations of their schemes. All relevant parts of a scheme valuation are to be aligned with whatever Treasury deems appropriate, irrespective of the specific sensitivities of the scheme.

The agreement reached in the Civil Service scheme stipulated that it would be the Minister for the Civil Service who would determine the assumptions for the valuation in that scheme, in conjunction with the governance group of the scheme, Treasury and GAD. The Bill does not allow that agreement to be honoured.

The extension of control gives Treasury (and the Department of Finance and Personnel in Northern Ireland) a far greater role in the running of all public service pension schemes. This extra layer of bureaucracy above that of the schemes' sponsoring departments will restrict the responsiveness of the schemes – as all amendments will have to receive Treasury consent. Secondly this undermines the consultation requirements set out in Clause 20 in the Bill as introduced. There is little point in 'Responsible Authorities' i.e. Cabinet Office for the PCSPS, consulting on changes to scheme regulations if the Treasury is the department that actually determines what scheme regulations are made.

The FDA believes it is still possible for the proposed NI Bill to be amended in order to enable scheme regulations to be produced implementing the agreed scheme reforms to the Civil Service Pension Scheme.

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NI PENSIONS BILL

FDA wishes to raise serious concerns about the above proposed Bill and associated consultation.

FDA members agreed a set of changes to the GB Principal Civil Service Pension Scheme and now expect the government to implement those changes. The proposed NI draft Bill will prevent this happening and furthermore introduces new provisions that were never discussed with GB officials and are contrary to the spirit and actuality of the discussions held.

To be clear, if the draft NI Bill does not reflect the agreement to which our members signed up to, that agreement will be broken.

The areas of greatest concern are as follows:

Valuation process and governance
The Bill effectively takes away from the DFP Minister and established (or new) governance arrangements the ability to manage the valuation process of the scheme. The agreement we reached for the Civil Service scheme stipulated that it would be the Minister, in conjunction with the governance group, Treasury and GAD who would determine the assumptions for the valuation. The Bill does not allow that part of the agreement to be honoured.

Negative revaluation
The existing CARE schemes do not provide for negative revaluation, if and when CPI (the current index) is negative, the figure used is zero. This is what members expect to apply from 2015 but the Bill currently allows for

a negative revaluation to take place. This would not only be a major communications problem if members are not to opt out in such circumstances but most fundamentally it is not part of the agreement.

Consultation and consent

At no point in the GB negotiations were we informed that the consultation provisions in the Bill and therefore in the new scheme would be weaker than is currently the case. In fact all the statements from the Chief Secretary give the distinct impression that the hurdles to future radical reform will be higher. Since the reform of the CSCS, the requirements in this regard have already been changed for the PCSPS so you will appreciate we did not expect this Bill to impose further, undiscussed changes.

We also have significant concerns about the apparent delay in the introduction of the expanded Fair Deal provisions which was central to our agreement and the lack of an independent review of the automatic link between normal and state pension ages which was a core recommendation of Lord Hutton in his report.

The attached Annex outlines additional concerns. We seek an urgent commitment from you that the proposed NI Bill will be sufficiently amended in order to enable the agreed reforms to take place.

Yours sincerely,

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