



Reform of PUBLIC SERVICE PENSIONS

UNISON's written submission on Public Service Pensions Reform Northern Ireland

Introduction

UNISON is the largest public service trade union in the UK representing around 1.4million members. The majority of our members are in the public service including approximately three quarters of a million members in the Local Government Pension Scheme (LGPS), nearly half a million members in the NHS Pension Scheme (NHSPS) and several thousand members in the Principal Civil Service Pension Scheme. In Northern Ireland UNISON represents more than 40,000 ,the majority of these in Health and Education.

UNISON was at the forefront of scheme specific negotiations with employers and government departments that resulted in the agreement for the Local Government Pension Scheme England and Wales from April 2014, and the NHS and Civil Service Pension Schemes from April 2015. UNISON undertook a comprehensive consultation with its members including member ballots in the Local Government Pension Scheme England & Wales & Northern Ireland, the NHS pension Scheme and the Civil Service Pension Scheme

UNISON believes that the purpose of the Public Service Pensions Bill should be to enable the individual pension schemes to implement the agreements reached between the employers and members.

UNISON has a number of serious concerns with the current wording of the Westminster Bill. It is our intention to try and seek clarification and reassurance on a number of the clauses of the bill and obtain amendments to the Bill where necessary. It is for this reason that we did not recommend MP's vote against the Bill at the second reading but will reserve our right to lobby MP's to vote against the Bill if necessary.

The concerns we have with the Westminster Bill and will equally apply to the Northern Ireland Bill fall under four main headings:

1. Are the provisions in the Bill as currently worded helpful to the implementation of the scheme specific Heads of Agreements?
2. Does the wording in the Bill provide adequate protection to members' rights and are there clauses with unintended consequences?
3. Does the Bill as currently worded enable schemes to deal with major issues that will impact on the ongoing cost of the schemes such as changes in longevity?
4. Does the Bill do enough to ensure effective governance of the schemes?

The provisions within the Northern Ireland Bill should be sufficiently worded to prove helpful to the implementation of the scheme specific Heads of Agreements?

For the agreements to work in both the LGPS and the NHSPS, it must be clear from the Bill that the schemes will be free to set up their own structures, as is the case now, to review pension policy and consider major changes to their scheme rules if necessary following a valuation.

In the NHSPS considerable work is undertaken by the Technical Advisory Group both on the assumptions and methodology used in the costing of the scheme and formulating proposals for change when necessary. The proposals are then taken to the Governance Group and Staff Council. At all stages the view of the Treasury/DFP is taken into account in formulating proposals.

UNISON would like assurance that a group along the lines of the Pension Policy Groups, as set out on *recommendation 17 of the Hutton Report*, would be able to be set up, and existing structures that currently undertake that role are able to stay in place, to operate effectively and consider any proposed changes to the scheme.

We would seek clarification that Treasury/DFP directions will not apply to individual LGPS funds. LGPS funds currently appoint their own actuary and agree with that actuary the assumptions and methodology most appropriate to their specific fund. Scheme regulations already specify when valuations are to be carried out and the requirements and control of valuations will be significantly strengthened under *clause 12 (4)* of the Westminster Bill.

UNISON would suggest that to make it clear at the outset, that any Treasury/ DFP directions made would require not just consultation, but the agreement of the government actuary. Also, that the Treasury should be required to consult and take into account the opinions of the existing governance structures of the schemes, before making a direction. To do otherwise seems to simply undermine the role of scheme specific governance structures.

When dealing with the employer contribution cap, **UNISON** would seek clarification as to what the Treasury/ DFP involvement would be with the LGPS. Principles designed jointly by the LGA and trade unions and agreed by the Government; provide a mechanism for setting the cap and collar that will be incorporated into the scheme regulations

We do not understand why any Treasury/ DFP directions should therefore apply to the LGPS as this seems to contradict the principles already agreed by government.

We would also seek to make it clear that any Treasury/ DFP direction made regarding the above would also need the Treasury/DFP to at least consult with the scheme manager and scheme board of the appropriate schemes.

UNISON is concerned that specific wording could unintentionally trigger a “crystallisation event” in funded schemes like the LGPS. This would have significant funding implications for all the funds in the scheme. We would suggest that within Northern Ireland it is made clear that existing public service schemes would not be closing but would be changed from a scheme change date, to reflect the respective agreements so that members can only accrue Benefits on the agreed basis from that date.

Will the Northern Ireland Bill provide adequate protection to member's rights and will there be clauses with unintended consequences?

UNISON does not believe that the proposed Pension Reform gives sufficient security to members and there are a number of areas that could potentially undermine the scheme specific agreements.

UNISON would not oppose an enabling provision which would allow Scheme regulations to make retrospective changes. It is however, essential that regulations cannot be made that have the effect of reducing accrued rights to pension benefits, unless the scheme members or their representatives have agreed to the change. The absence of such wording potentially undermines the commitment given by government that accrued rights up to the date the schemes are changed will not be reduced

This would also ensure workers in public service pension schemes would enjoy the same protection of their accrued pension rights as exist for workers in the private sector in pensions law.

UNISON understands from certain comments made by the government at the Westminster committee stage of this bill that the government believes trade unions would be able to prevent such a change and that if that failed, members could rely on the European Convention on Human Rights. Whilst appreciating the recognition of the role of unions in protecting workers pensions entitlements we would prefer that protections are built into the Northern Ireland Bill itself.

UNISON would suggest that The National Agreement with the government is based on public service schemes remaining Defined Benefit Schemes after 2014 and 2015. The government is on record as believing that these agreements should last at least 25 years and this is set out in Clause 20 of the Westminster Bill. The power currently in Clause 7 of the same Bill to potentially replace the schemes with defined contribution schemes, let alone a scheme of any other description, will undermine confidence in that agreement.

There is a defined contribution scheme already operating in the civil service but this is in addition to the defined benefit scheme. Members are able to choose which scheme they can join. If the intention is to be able to establish other types of schemes to operate alongside the defined benefit schemes, the wording should reflect this.

With the move to CARE provision this would have the effect of reducing accrued rights especially in the case of schemes negotiated for the LGPS and Civil Service Pension Schemes where the revaluation rate on earnings only is linked to CPI. The possibility of reducing benefits through negative revaluation was not part of the scheme specific discussions or the costings that underlined them.

UNISON as a major Health and Social Care Union has concerns regarding the direction taken on possible closure to existing Injury and Compensation Schemes. We have already set out our understanding that existing public service schemes should not be closing but would be changed from a scheme change date to reflect the respective scheme specific agreements, so we cannot see why injury benefit schemes need to be closed - this was not part of the scheme specific discussions that UNISON attended.

UNISON believes the emphasis in this section should be on continuing existing injury allowance arrangements in accordance with the existing scheme regulations. Injury benefit arrangements have already been periodically reviewed and regulations amended in the NHSPS.

UNISON would wish to protect the accrued rights that members have earned in their Public Service Pension Schemes. We cannot see why there should be a power to make retrospective provision which adversely affects members of the schemes. We would want to change wording so that any adverse effect would require the changes to be made to regulations using the affirmative procedure, so that it would be debated in the Assembly. An adverse effect can be measured but a significant adverse affect is open to interpretation and is subjective.

Under the agreements a cost cap will be enforced so it is certainly possible that schemes will need to change in the future, however it should be made clear that any change must not have the effect of reducing accrued rights.

UNISON would also question why such changes would not require normal consultation procedures. The jointly agreed scheme specific governance arrangements should be discussed and considered by the relevant scheme bodies and then, if agreed by the stakeholders, consulted in the usual way.

UNISON would wish to see specific mention in the Northern Ireland Bill to an agreement on "Fair Deal". In future Fair Deal would be achieved by members being allowed to stay in their existing public service schemes on

first and subsequent transfers to the private sector. UNISON sees this as a key protection both to the scheme members and the continuing sustainability of the schemes.

'Fair Deal' is important to scheme members, because it means their pension provision will not worsen if they are outsourced. It is important for the continuing sustainability of the schemes because if large numbers of contributing members are lost to the scheme it means the schemes will become increasingly 'cash poor' with the gap between contributions coming in, and pensions being paid, widening. In addition, for funded schemes it will mean the proportion of younger members against the total membership is likely to decline, with the result that the older profile of the scheme members will mean the cost of the scheme increasing.

The Northern Ireland Bill should be worded to enable schemes to deal with major issues that would impact on the ongoing cost of the scheme such as changes in longevity?

As part of the agreements, normal pension age in the public service schemes will be linked to a member's state pension age (SPA) for service after the date that the schemes change in 2014/15. UNISON understands the government's intention to try and use the link to SPA to deal with increases in life expectancy of scheme members. UNISON would however, suggest that a future review of the continuing appropriateness of the link between Normal Pension Age (NPA) and SPA be built into the Northern Ireland Bill. We believe it is necessary to ensure that the variation in changes in life expectancy in public service schemes is reflected in the changes in the SPA. Periodic reviews were recommended by Lord Hutton in his final report.

There are clear issues of fairness relating to groups of workers who do not enjoy the same life expectancy as others and there are serious issues regarding how schemes would be costed, if scheme specific life expectancy is seriously out of sync with SPA.

The other issue that makes it prudent to allow a review to take place is whether the link is ever likely to be successfully challenged under the European Convention on Human Rights. This could occur for example, if a service is outsourced and colleagues doing the same job end up with different levels of protection on their NPA.

In the private sector, if a retirement age is changed it can only apply to service after the date of the change. In the proposed public service

schemes after 2014/15 all service from those dates would be changed to reflect a different retirement age if SPA continues to be increased.

UNISON would also suggest that there are specific discussions regarding the affect of working longer on specific groups of workers. For example, as part of the agreement in the NHSPS, a Working Longer Review Group has been set up. The review will take up to 18 months and will look at specific groups, for example paramedics. UNISON would not wish to pre-judge the findings of the group. The Northern Ireland Bill should at least enable schemes to be able to look objectively at the effect on members having to work longer and also take into account the views of employers. Employers may find it preferable that some groups have a lower normal retirement age rather than having to deal with issues including increasing long term sick leave and ill health retirements as retirement ages increase.

Will the reforms do enough to ensure effective governance of the schemes?

UNISON has always worked hard to try and improve the governance of pension funds and to make them more transparent and accountable to the stake holders.

All funded public sector schemes in the European Union, including those made under statue with a state guarantee are covered by the requirements of the EU Directive – Institutions for Occupational Retirement Provision (IORP). The provisions in the Northern Ireland Bill must not fall short of the requirements of a funded pension scheme, which the LGPS is.

The Westminster Bill sets out the local authority becoming the scheme manager for each fund, with a pensions committee and/or a local board, but does not say how that board is constituted. Currently the pensions committee is run under local authority law, on which the councillors sit in the lead party majority, with a fiduciary duty to tax payers and not to scheme members.

This means that that the current governance system sits outside of the EU IORP Directive despites its transposition into UK law via the Pensions Act 2004 and the Occupational Pension Scheme Investment regulations. UNISON's counsel opinion, which we submitted in detail to the Hutton Commission, is clear that the IORP Directive Applies to the LGPS funds.

Governments can exempt statutory IORPs, such as the LGPS from Articles 9 to 17 of the Directive's 22 principal articles. This is by virtue of Article 5 of the Directive which says.

“Article 5: Member States may choose not to apply Articles 9 to 17 to institutions where occupational retirement provision is made under statute, pursuant to legislation, and is guaranteed by a public authority.”

However, the major issues of non-compliance of the LGPS arise from Articles 8 and 18 of the Directive.

Article 8 requires legal separation of the IORP (in this case each LGPS fund) from the employer. Article 18 requires prudential investment rules, investments to be made in the sole interests of scheme members and beneficiaries and conflicts of interest resolved in their favour.

We believe that the Assembly must introduce the directive to the LGPS by amending the Bill or face potential legal challenge.

UNISON would suggest an amendment to show that the European Directive – Institutions for Occupational Retirement Provision (IORP) applies to public funded Public Service Schemes such as the LGPS. UNISON does not believe it is appropriate for *articles 9 – 17* to apply to a statutory funded scheme such as the LGPS and member states can choose not to apply these articles. However, there is no such power to dis-apply *articles 8 & 18*.

UNISON would suggest that it makes clear that the Pensions Manager and Pensions Board cannot be one and the same person or persons. In practice the two roles are distinct so a tightening up of the wording we believe would be advisable. The local authority cannot run the pension system, an independent board could if it is separated from the sponsoring employer, and an example of this is the London Pension Fund Authority.

UNISON believes that appropriate wording to reflect the above will lead to greater transparency and more effective governance. It is particularly important at a time that discussions are taking place over the extent of possible infrastructure investments that *article 8 & 18* are taken into account.

UNISON has pushed for member representation on pension scheme committees for many years. Lord Hutton in his final report recognised member representation on pension fund committees represented best practice and should be introduced. UNISON would suggest that every pension board should have member representation. Ideally it should provide the same level of representation in public service pension schemes as is required in private sector defined benefit schemes. After the 'Maxwell' pension scandal and the findings of the Goode Committee, the Pensions Act 1995 required all defined benefit schemes to have a minimum proportion of member nominated trustees. This is still in force as amended by the Pensions Act 2004. The minimum proportion was initially and remains 1/3 of the Trustee Board but the government has given itself the power to increase this to 1/2 at some time in the future.

The argument has been in the past that an occupational pension scheme that is made under statute like the Local Government Pension Scheme means that members of the scheme do not bear the same level of risk as colleagues in the private sector. In fact, it has become clear that while accrued benefits are effectively underwritten by the Local Authority, investment performance together with employers paying very low levels of contributions during the 1980s and early 1990s has significantly contributed to the size of LGPS past service deficits. The effect of low contributions and declining investment returns has had a greater effect on the size of the deficits than the increase in life expectancy. It is clear that the cost pressure caused by these deficits has been a major factor influencing decisions to change future pension provision in the past. So although under the current cost cap proposals investment returns are excluded, the members of the scheme do bear significant risk if the performance of the funds do not result in alleviating cost pressure and should have representation on the pension boards.

9th April 2013