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

Our Ref – CFP118/11-15

21 June 2012

Dear Shane,

Superannuation Bill

I refer to your letter of 25 May seeking clarification on issues raised to date for evidence received by the Committee.

A list of the main issues to be addressed and the Department's response is set out below.

What consideration has the Department given to carrying out a consultation and full equality impact assessment on proposals for reform of the Civil Service Compensation Scheme (Northern Ireland)?

The Department has a statutory duty under Article 3(2) of the Superannuation (Northern Ireland) Order 1972 to engage in consultation with representatives of persons likely to be affected by changes to pension and compensation schemes before changes are made. It will formally consult with Trade Unions on proposed legislation to amend the compensation scheme in line with this requirement. The Superannuation Bill would not change this statutory duty.

The Northern Ireland Civil Service generally operates pension and compensation scheme arrangements on the basis of parity with Great Britain. Proposals to reform the Civil Service Compensation Scheme (Northern Ireland) will align the rules of the scheme with changes already made to the rules of the Civil Service Compensation Scheme for the Home Civil Service. As the central purpose of proposed reforms to the compensation scheme is to maintain the long standing principle of parity with the Home Civil Service the Department does not consider a full public consultation on the proposals is required. Trade unions representing the Northern Ireland Civil Service and associated employments covered by the PCS(S)(NI) arrangements (including NIPSA, FDA and POA) which were represented on the Council of Civil Service Unions were involved in central negotiations with HM Treasury and the

Cabinet Office on the equivalent reforms of Home Civil Service compensation arrangements prior to their implementation in 2010.

In October 2011, the Department established a Pensions Forum between civil service management side and trade union side for engagement and consultation on the prospective changes to pensions and compensation arrangements in respect of the Northern Ireland Civil Service and associated employments covered by the PCSPS (NI) arrangements. Whereas, at trade unions request, this forum has to date been engaged in information sharing, the Forum has now been formally reconstituted to enable full consultation on matters relating to pensions and compensation scheme reforms with the aim of reaching agreement on any changes.

The Superannuation Bill has been discussed at each meeting of the Pensions Forum held on 25 October 2011, 12 December 2011, 14 March 2012, 16 April 2012 and 15 May 2012. The Department provided trade unions with a copy of the draft Bill on 1 March 2012. In advance of the meeting on 19 June 2012 Trade Union Side were provided with The Superannuation Bill, The Superannuation Order (Northern Ireland) 1972 (with proposed amendments referenced in red) and briefing by way of an explanation of each clause of the Bill to inform discussions. Trade Union Side were not in a position to engage fully in discussions on the clauses at this meeting and a further meeting is now planned for 9 July to enable full clause by clause consultation.

The Committee has heard oral evidence from members of the Pensions Forum, during which trade unions expressed the view that proposed changes to the Compensation Scheme that are planned to follow this Bill, and already implemented in the Home Civil Service, are part of a general austerity programme. They have stated that they have been, and are still supportive, in many respects of the parity approach and have pointed out whereas there is no exact parity in relation to civil service pay there has generally been parity in relation to pensions and compensation.

The trade unions' view is that in terms and conditions of employment they generally argue for no detriment. It is for that very reason that the proposed clauses in the Superannuation Bill are required. The situation where trade unions have a 'veto' to any changes which can have detrimental impact on the terms of the scheme is not conducive to progressing the changes required to address age discrimination vulnerabilities and to demonstrate responsible use of public funds.

The Department intends to conduct an equality screening exercise on proposals for reform of the Civil Service Compensation Scheme (Northern Ireland). The outcome of the equality screening exercise will determine if a full equality impact assessment is required.

What consideration has the Department given to ensuring compliance with the age equality legislation, namely the Employment Equality (Age) Regulations (NI) 2006?

In July 2009, when the Labour Government published its consultation document setting out reform proposals for compensation arrangements for the Home Civil Service (Fairness for All – Proposals for Reform of the Civil Service Compensation Scheme) a key principle of the original proposals, and one which has been carried forward from then by the Coalition Government, has been to ensure that the terms of the Compensation Scheme are not age discriminatory. It was accepted by Government and Trade Unions that the Home Civil Service scheme had to be reformed to comply with age equality legislation made in the Employment Equality (Age) Regulations 2006. The schemes for the NHS, local government and teachers also have been reformed in recent years, partly to address any provisions that might contravene age discrimination legislation. The Government regards the terms of the new Compensation Scheme for the Home Civil Service introduced on 22 December 2010 to be in compliance with the age equality regulations applying in Great Britain. The proposed changes to the Civil Service Compensation Scheme (Northern Ireland) replicate those changes for the Civil Service Compensation Scheme in the Home Civil Service and the Department is of the opinion that the proposed changes comply with the Employment Equality (Age) Regulations (Northern Ireland) 2006 which apply in Northern Ireland.

As the Bill will facilitate detrimental changes to the Compensation Scheme, what consideration has DFP given to publishing the draft scheme amendments and associated impact assessments at this stage and to inform deliberations on the implications of the Bill provisions?

The Department has not considered publishing draft amendments and impact assessments until the Superannuation Bill has completed its passage in the Assembly and the content is finalised. The Department has and continues to use the Pensions Forum as a properly constituted body for consultation with Trade Union Side on the implications of the proposed Bill provisions. The Department's remit is to maintain parity with changes made to compensation arrangements for the the Home Civil Service on this matter. Northern Ireland trade unions (including NIPSA, FDA and the Prison Officers Association (POA) were represented on the Council of Civil Service Unions and were involved at decision making stages in central negotiations with HM Treasury and the Cabinet Office on the amendments to the Home Civil Service compensation arrangements during 2009/10, the results of which are in the public domain and published in the rules of the Home Civil Service Compensation Scheme.

What detailed analysis has DFP undertaken of the human rights considerations associated with the Bill in the Northern Ireland context (i.e. beyond the outline provided at paragraph 9 of the Explanatory and Financial Memorandum) and can this be provided to the Committee?

In its written submission to the Committee the Northern Ireland Human Rights Commission states that the proposal to remove the duty to seek trade union consent risks regression in the protection of the following rights:

- the right to form and join trade unions for the promotion and protection of economic and social interests – Article 8, International Covenant on Economic, Social and Cultural Rights;
- the Labour Relations (Public Service) Convention, International Labour Organisation, Convention No. 151;
- the right to organise and to join organisations for the protection and promotion of economic and social interests – Article 5, European Social Charter; and.
- the right to collective bargaining – Article 6, European Social Charter.

The Department has consulted with the Department Solicitor's Office on these issues and it has advised that these rights are not interfered with by the clauses in the Superannuation Bill. The Bill does nothing to interfere with the right to form a union and actually imposes a duty on the Department to consult with the union with a view to reaching agreement. It also contains the additional safeguard that the Department must report to the Assembly on the consultation undertaken, the steps taken to try to secure agreement and whether such agreement was reached. It is the view of the Department Solicitor's Office that the removal of the union veto to changes to the compensation scheme does not pose a significant risk of a successful challenge to the Bill on human rights grounds.

In the case taken by the Public and Commercial Services Union v Minister for the Civil Service (the case referred to by the NIHR) the union sought (unsuccessfully) to argue that the corresponding provisions to those in the Bill introduced in England by the Superannuation Act 2010 amounted to a violation of Article 11 of the European Convention on Human Rights. Article 11 provides for the right to freedom of peaceful assembly and freedom of association including the right to form and join trade unions. In what the judge described as "a surprising submission", the claimants argued that the Old Scheme represented the product of collective bargaining and that by amending section 2(3) of the Superannuation Act 1972 and using the amended Act to set aside the Old Scheme, the defendant had nullified the collective agreement that it represented, which amounted to a violation of Article 11. The judge dismissed this submission in very clear terms as follows:-

"In the present case, the unions remain fully active and recognised in representing their members' interests in negotiations with the employer. Collective bargaining continues. Even with regard to this scheme there was negotiation with all unions and agreement with the majority of them. This case simply gets nowhere close to a situation where the right to freedom of assembly and association is infringed."

Whilst it is true that this decision of the High Court in England is technically not binding in NI, the Department Solicitor's Office is of the view that in reality it would almost certainly be followed by the courts in this jurisdiction.

What consideration has DFP given to the potential implications of this distinction between the position in Whitehall with that in Northern Ireland in terms of striking the right balance between the socio-economic interest and legitimate human rights considerations?

In evidence to the Committee on 9 May 2012 the Northern Ireland Human Rights Commission has referred to the claim taken by the Public and Commercial Services Union on grounds that rights to redundancy pay and the compensation scheme for the Home Civil Service amounted to 'possessions' and that changes made to the scheme were an interference with those possessions under protocol 1 of the European Convention on Human Rights (ECHR). In that case the union's claim was dismissed. The High Court ruled on 10 August 2011 that the Coalition Government's actions to reform compensation arrangements for the Home Civil Service were proportionate in pursuit of a legitimate aim, being the reduction of the national deficit. The test that was applied in that case was not whether an interference to protected rights had occurred but whether an interference with rights to possessions could be proportionally justified and whether a fair balance had been struck between the persons affected and the community as a whole?

The Northern Ireland Human Rights Commission has argued that socio-economic conditions in Northern Ireland could result in a different outcome if the test of proportionality were to be applied here. The Department considers that breaking parity on this issue would have serious financial consequences in terms of funding from the Northern Ireland block grant. The Coalition Government is committed to the policy that public service superannuation costs should be controlled across the United Kingdom as part of its strategy to reduce the national deficit. The block grant will not be increased to take account of additional finances required in order to continue funding more generous compensation arrangements for civil servants in Northern Ireland, compared to those now available to civil servants in other parts of the United Kingdom. The ring-fencing of a proportion of the finite funds available to Northern Ireland through the block grant in order to maintain the current arrangements would impact on the Northern Ireland Executive's ability to fund its wider range of programmes. For these reasons the Department is of the view that the socio-economic situation facing the people of Northern Ireland, and the necessity to create savings to the public purse, is the same as that which applies in Great Britain and in the event of a claim being made under protocol 1 of the European Convention on Human Rights that changes to compensation arrangements constitute an interference to a right to possessions, any interference can be justified in light of the effect for the community as a whole.

The House of Commons commissioned the National Audit Office to report on the management of 'early departures' of staff in central government in Great Britain. The study examined the potential for government departments to achieve savings from early departures over the period of the spending review; and to sustain value-for-money savings over the longer term. The report published on 15 March 2012 found that central government departments have spent around £600 million gross on the early departures of 17,800 staff in the year from December 2010. These costs are around 45 per cent lower than they would have been under the previous scheme. After meeting the initial costs, departments will save an estimated £400m a year on the paybill.

In relation to the CIPD submission, DFP is asked to comment on the paper and the comparisons between the civil service, private sector and the wider public sector.

The Department has noted the comments from the CIPD, which are applicable to proposals for the revised Compensation Scheme rather than the terms of the Superannuation Bill, and would highlight the following general comments made:

“When it comes to costs, an organisation needs to consider how generous they can afford to be. This will inevitably depend on the circumstances it faces.”

and,

“Within the public sector, a potential major concern may revolve around not wishing to be seen as too generous with tax payers’ money...”

These points are particularly valid as all compensation payments and enhanced pensions entitlements incur a charge against employers’ Departmental Expenditure Limit budgets and there is little need to rehearse the impact the national deficit has on budgets.

“...consider how its own redundancy package compares with those being offered by other organisations.”

and,

“With regard to the proposed changes, the new NICSS [Civil Service Compensation Scheme (NI)] will be more generous than many private sector employees could expect to enjoy”

An obvious comparable organisation would be the Compensation Schemes currently in operation for Civil Service staff in England, Scotland and Wales, which the NICS has mirrored over many decades until the introduction of revised terms in 2010.

It is worth noting that the proposed reform of the Compensation Scheme is proportionate and fair in that it protects the lower paid and restricts payments to the higher paid. If a member earns less than £23,000, they will be treated as if they earn that amount for compensation payment purposes and if the member earns more than £149,820, they will be treated as if they earn that amount for compensation payment purposes.

In relation to the other public sector pension schemes, for example, the Northern Ireland Teachers’ Pension Scheme and the Health and Social Care Pension Scheme (Northern Ireland), each mirror their respective pension schemes in Great Britain, and have recently reformed their early retirement arrangements to make employers directly responsible for the extra cost of early retirement. Also, additional service credits have been withdrawn. These reforms were driven by the need to comply with age discrimination legislation. There are also provisions created to

allow employers to make discretionary compensation payments for termination of employment at an optimum amount of 90 to 104 weeks respectively for each of the schemes.

The Department would point out that the Superannuation Act 1972 extends to all Home Civil Service employments including those in the devolved administrations in Scotland and Wales and to those Home Civil Servants working in Northern Ireland. Only the Northern Ireland Executive has devolved responsibility for superannuation provisions for the Northern Ireland Civil Service, which is made in the Superannuation (Northern Ireland) Order 1972.

Officials will be available on the 4th July to provide further clarification.

Yours sincerely,

A handwritten signature in cursive script, appearing to read "Norman", followed by a long, sweeping horizontal line that extends to the right.

NORMAN IRWIN