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Committee for Finance and Personnel
Room 419
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Our Ref –CFP136/11-15

25 July 2012

Response to the DFP Committee – Superannuation Bill

Dear Shane,

Following the Evidence Session on 4th July in relation to the Superannuation Bill it was agreed that officials would provide written comments on the various issues and copies of the Judicial Review and the Pensions Forum's "Terms of Reference". The comments and views of the Department are set out below and the relevant documents are attached.

As stated in the Evidence Session, you may wish to note that the Department will not be preparing any amendment to the proposed Clauses of the Superannuation Bill and the rationale behind this is set out below.

Clause 1 - Removes the Trade Union Veto.

The Committee queried whether the union veto applied to the other schemes. It should also be noted that the other Northern Ireland public sector schemes (Teachers, Health Service staff, etc) do not have a union veto in their legislation. Under Articles 9, 11 and 12 of the Superannuation (Northern Ireland) Order 1972 these schemes are only required to consult with representatives before they make provision with respect to pensions, allowances or gratuities. The removing of the trade union veto in the Civil Service Scheme is only in respect of the gratuities in the Compensation Scheme and will remain for all other superannuation arrangements.

The Committee raised the issue of changing the way secondary legislation is made (i.e. by scheme amendment) for the Principal Civil Service Pension Scheme in Northern Ireland. It may be helpful to understand the historical context behind this development. The subordinate legislation process for the Department of Finance and Personnel relates back to the review of the superannuation arrangements that commenced in 1968 in Great Britain. The 1972 Superannuation Act in Great Britain was established as a result of the

Joint Superannuation Committee of the National Whitley Council. In 1968, this Committee was set up to review the superannuation arrangements for the civil service. The review followed from the report of the Committee on the Civil Service (the Fulton Committee) which recommended wider changes to the civil service. The Fulton Committee recommended that any superannuation arrangements should not be set out in primary legislation. Both Management and Trade Union sides of the Whitley Council agreed. The Joint Superannuation Committee produced a report in February 1972. It agreed this approach that benefits should no longer be a matter of discretion. The government said that it had never abused the discretion that it theoretically had and the Staff Side agreed benefits had always been awarded as a matter of course. The Committee felt that it was wrong in principle that benefits should appear to be discretionary but rather they should be mandatory. The Joint Committee recognised that there were some instances where it would be in the interests of the civil servant that the benefits would be, theoretically if not in practice, discretionary for tax purposes. The benefits singled out, where it would be in the interest of the civil servant for the benefit to be discretionary were death benefits, some gratuities, injury benefits and premature retirement benefits.

This then established the legislative framework and removed the discretion for paying benefits. From 1972 new schemes were removed from Primary Legislation and "promulgated by administrative act of the relevant Minister".

The Joint Committee also recognised that moving from an arrangement where benefits were the subject of Parliamentary decision to arrangements where benefits were to be set out in a scheme made by a Minister was potentially to the disadvantage of civil servants. That had already been discussed by the trade unions and the Government and as the report records the Government had agreed to four important safeguards in 1972.

- First, any amendment to the scheme would require genuine consultation with "staff interests" meaning the National Whitley Council.
- Secondly, "staff representatives" would have to agree to any worsening to pensions in payment or pension rights already accrued.
- Thirdly, the Bill allowed the scheme to give a legal entitlement to benefits.
- Finally, any scheme would have to be laid before Parliament (even if Parliamentary approval was not required).

These changes formed the basis of the 1972 Superannuation Act in Great Britain and subsequently the 1972 Superannuation Order in Northern Ireland.

Under the new arrangements proposed, the first of these safeguards will be strengthened in that a report detailing the steps taken to secure agreement with the unions is to be laid in the Assembly. This will, as indicated in the debate in the Assembly earlier this year, be subject to the usual scrutiny. The legislation in Northern Ireland to date has mirrored the approach taken in the Home Civil Service.

The second safeguard is the subject of the Bill and it should be noted that the consents required in Clause 1 of the Superannuation Bill are specific to the civil service compensation scheme. The proposed additions of Paragraph (3A) and (3B) in Article 4(3) only relate to the Compensation Scheme and therefore Article 4 (3) remains unchanged for any other superannuation arrangements under Article 3 of the Superannuation (Northern Ireland) Order 1972.

The final two safeguards will be unaffected.

Clause 2 – new requirements for consultation process

On the issue of consultation versus negotiation, 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. The Department will formally consult with Trade Unions on proposed legislation to amend the compensation scheme in line with this requirement. The changes to the Superannuation Bill would not change this statutory duty.

The Pension Forum Terms of Reference (copy attached), which have been agreed with the Trade Union Side make clear that the Department will “consult with the aim of reaching agreement ... on matters relating to the Compensation Scheme reform and Pensions reform.” This is in keeping with the legislative provision and the requirement for appropriate engagement with TUS. The Pensions Forum was established in October 2011 and the Terms of Reference to move this to a consultative body were agreed on 21st June 2012. This Forum will provide a means to consult with Northern Ireland Civil Service trade unions at the earliest opportunity and at the most appropriate level on any proposed changes to the Home Civil Service pension and compensation arrangements in Great Britain which could have an impact on the arrangements for the Northern Ireland Civil Service. The Pensions Forum has met on seven occasions to date and the Superannuation Bill has been discussed at each meeting.

Timing is important for consultation to be effective; engagement has been and will continue to be undertaken in a timely manner with TUS. The Northern Ireland Civil Service unions represented on the Council of Civil Service Unions were involved in central negotiations with HM Treasury and the Cabinet Office on proposed reform of Home Civil Service compensation arrangements in 2009/10. Although the Council of Civil Service Unions has since been dissolved the seven nationally recognised trade unions in the civil services (PCS, POA, Prospect, FDA, NIPSA, Unite and GMB) are now part of a new National Trade Union Committee which provides these unions with a means to co-ordinate consultation with government on proposed reforms at formative stages.

In terms of formal consultation, the existing statutory requirement contained in Article 3(2) of the Superannuation (Northern Ireland) Order 1972 for consultation with trade unions representing civil servants does not specify a

timeframe for consultation to take place. In certain circumstances, such consultation is a precondition to the Department exercising a power to make a statutory rule. In other cases, it is good practice. The Department adheres to the timeframes set out in the OFMdFM's "Practical Guide to Policy Making in Northern Ireland".

The Committee also raised the issue of amending the Bill to ensure it included detail on any changes to the provisions as a result of the consultation. The report laid in the Assembly will provide details of the efforts made to reach agreement on any proposed changes and will also include any amendments agreed during the consultation.

Equality Impact Issues & Human Rights Issues

The Department has nothing further to add.

I trust that this information provides all the clarification required by the Committee on the clauses on the Bill.

Yours sincerely,

A handwritten signature in cursive script, appearing to read "Norman", followed by a long horizontal flourish line.

NORMAN IRWIN