SUPERANNUATION BILL 2011

From: **NORMAN IRWIN**

Date: **7 JUNE 2011**

To: **SHANE McATEER**

Re: **EVIDENCE SESSION – 15 JUNE 2011**

Summary

Business Area : Corporate HR.

Issue: Proposed Superannuation Bill 2011.

Restrictions: None.

Action Required: To note.

BACKGROUND

1. The Committee has requested that Corporate HR officials attend the meeting on 15 June 2011 to provide information on the proposed Superannuation Bill 2011. The Committee has not been briefed before on this issue.

KEY ISSUES

2. DFP has authority to make and maintain pension and compensation schemes for Northern Ireland civil servants under Article 3 of the Superannuation (Northern Ireland) Order 1972. The main schemes for civil servants made under the Superannuation (Northern Ireland) Order 1972 are the Principal Civil Service Pension Scheme (Northern Ireland) and the Civil Service Compensation Scheme (Northern Ireland). The Superannuation (Northern Ireland) Order 1972 requires that the Department shall engage in consultation with trade unions representing civil servants on any proposed changes to these schemes. Under Article 4 of the 1972 Order, the Department is also required to secure the consent of the trade unions representing civil servants for any detrimental change which would have the effect of reducing the level of benefits payable under these schemes. The Northern Ireland Civil Service (NICS) compensation scheme determines the levels of compensation paid to members who are made voluntarily or compulsorily redundant. It should be noted that in addition to NICS staff, a number of other public bodies are also members of the Scheme, including Invest NI, NI Museum Council, Office of the Chief Electoral Officer and Civilian Recruits to the PSNI.

3. The NICS pension and compensation schemes operate on the basis of parity with the equivalent schemes in the Home Civil Service, which are made and maintained by the Cabinet Office under the provisions of the Superannuation Act 1972 which is the GB equivalent to the Superannuation (Northern Ireland) Order 1972. Although public service pension policy is a transferred matter it has been a matter of practice for many decades that the schemes for civil servants in Northern Ireland have been virtually

identical to their equivalents in GB. Failure to maintain parity in this instance would result in civil servants in Northern Ireland who are made voluntarily or compulsorily redundant receiving higher compensation payments than GB civil servants who leave in similar circumstances, which may exert additional pressures on public expenditure in Northern Ireland. Cash payments in the NICS compensation scheme are determined with reference to both length of service and age of the individual. Under the current provisions payments are generally limited to a maximum of 3 years' pay. A new compensation scheme for the Home Civil Service was introduced on 22 December 2010 and the maximum payable is limited to 21 months' pay for voluntary redundancy and 12 months' pay for compulsory redundancy. These terms are considerably less generous than those currently available to Northern Ireland civil servants.

4. The Minister for the Cabinet Office, Francis Maude, introduced a Superannuation Bill in the House of Commons on 15 July 2010 to amend the provisions of the Superannuation Act 1972. This Bill received Royal Assent on 16 December 2010 and is now an Act of Parliament. The Act amends the Superannuation Act 1972 to remove the requirement in that Act for trade union consent to detrimental changes[1] to the compensation scheme. The Act also included provisions to cap the amount of compensation payable to civil servants in GB to 12 months pensionable pay on compulsory redundancy and 15 months pensionable pay on voluntary redundancy. The capping provisions were subsequently withdrawn following the introduction of a new civil service compensation scheme in GB.

5. The Superannuation Act in GB was developed against the backdrop of protracted negotiations between Cabinet Office and Home Civil Service trade unions aimed at reaching agreement on a new compensation scheme for the Home Civil Service. Cabinet Office had previously introduced a new compensation scheme for the Home Civil Service in February 2010. The Public and Commercial Service (PCS) Union is the largest Home Civil Service union and is supported by the Northern Ireland Public Service Alliance (NIPSA) in Northern Ireland. PCS opposed the terms of the new scheme and mounted a legal challenge against its implementation without union consent as was required by the Superannuation Act 1972. The legal challenge was successful and the new scheme was quashed by the High Court in May 2010.

6. On that occasion the Minister for Finance and Personnel determined it appropriate to delay the introduction of an equivalent compensation scheme for the NICS pending the outcome of the PCS legal challenge. The prevailing rationale in this instance was that had the PCS legal challenge failed an equivalent scheme could be introduced for the NICS relatively swiftly by way of a scheme amendment, which is made in secondary legislation and not subject to parliamentary procedure in the NI Assembly. The powers conferred by the Superannuation (Northern Ireland) Order 1972 enable the Department of Finance and Personnel to amend pension and compensation schemes for staff in the NICS without the need to do so through primary legislation. The position in GB is identical in that powers conferred by the Superannuation Act 1972 enable the Minister for the Civil Service in GB to make, maintain and administer pension and compensation schemes for staff in the Home Civil Service by secondary legislation.

7. Subsequent to the amendment to the Superannuation Act 1972 removing the need for union consent to detrimental changes to the compensation scheme, Cabinet Office introduced a new compensation scheme for the Home Civil Service with effect from 22

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[1] Detrimental changes is the terminology used in the explanatory notes to the GB Superannuation Act 2010.

December 2010. On 21 March 2011 the PCS announced that, in conjunction with the Prison Officers Association, it had launched fresh legal action against the imposition of the new scheme. The unions are seeking a Judicial Review on the basis that the manner in which the scheme has been implemented to cut benefits which are based on civil servants' accrued service is in breach of the European Convention on Human Rights. A date for a hearing in the High Court has yet to be set.

8. If the result of the latest legal challenge is unsuccessful and the new compensation scheme for the Home Civil Service stands, the Department of Finance and Personnel will at present be unable to implement an equivalent, less generous, scheme for the NICS without the consent of the NICS trade unions as is currently required under Article 4 (3) of the Superannuation (Northern Ireland) Order 1972. However, should the PCS legal challenge succeed it is likely that Cabinet Office will reintroduce provisions in the Superannuation Act 2010 to cap the amount of compensation payments to 12 months pensionable earnings in the case of compulsory redundancy and 15 months pensionable earnings in the case of voluntary redundancy. These provisions were initially included in the Superannuation Act 2010 and subsequently repealed when the new compensation scheme was introduced. If the Cabinet Office did reintroduce the limits on the amount of compensation benefits payable there would be a requirement to also amend the proposed Superannuation Bill accordingly to maintain parity, but it is not necessary to do so at this time.

NEXT STEPS

9. In summary there are three possible scenarios which may arise and each requires a different course of action. The three scenarios are as follow:

   I. The position in GB remains as at present and the legal challenge to the new GB compensation scheme is unsuccessful. In these circumstances the Superannuation (Northern Ireland) Order 1972 would be amended by primary legislation through the proposed Superannuation Bill to remove the need for union consent to reduce compensation payments. This amendment will also insert new requirements for the Department of Finance and Personnel to make an official report to the NI Assembly on the consultations that has taken place with trade unions prior to any detrimental change being made to the Civil Service Compensation Scheme (Northern Ireland) The report will be required to include details of the consultation that took place, the steps taken in connection with that consultation with a view to reaching agreement in with the trade unions, and finally, whether such agreement has been reached. The Civil Service Compensation Scheme (Northern Ireland) can then be amended accordingly by secondary legislation which takes the form of a scheme amendment.

   II. The PCS union is successful in its legal challenge to the terms of the new compensation scheme in GB during the course of the passage of the proposed Superannuation Bill in the Assembly, and the Cabinet Office decides to reinsert the capping provisions in the Superannuation Act 2010. – In these circumstances we would arrange to table an amendment to the proposed Superannuation Bill to insert similar capping provisions in addition to amending the Superannuation (Northern Ireland) Order 1972 to remove the need for union consent to reduce compensation payments. There would be no need for secondary legislation in this instance.

   III. The proposed Northern Ireland Superannuation Bill becomes law and the Superannuation (Northern Ireland) Order 1972 is amended to remove the need for union consent to reduce compensation payments. The PCS and POA are successful in their legal challenge and the Cabinet Office subsequently reinstates the capping provisions in the Superannuation Act 2010. – In these circumstances new legislation would be required to insert similar capping provisions in the proposed Superannuation Bill 2011 after it has become law and an Order of the NI Assembly.

10. The Minister has issued a paper to his Executive colleagues. The paper is scheduled for discussion on 16 June 2011.

Norman Irwin