

# **PUBLIC SERVICE PENSIONS BILL**

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## **EXPLANATORY AND FINANCIAL MEMORANDUM**

### **INTRODUCTION**

1. This Explanatory and Financial Memorandum has been prepared by the Department of Finance and Personnel in order to assist the reader of the Bill and to help inform debate on it. It does not form part of the Bill and has not been endorsed by the Assembly.
2. The Memorandum needs to be read in conjunction with the Bill. It is not, and is not meant to be, a comprehensive description of the Bill. So where a clause or part of a clause or Schedule does not seem to require an explanation or comment, none is given.

### **BACKGROUND AND POLICY OBJECTIVES**

3. On 8<sup>th</sup> March 2012 the Executive agreed the introduction of major changes to public service pensions. In particular the Executive agreed to:
  - commit to the policy for a new career average revalued earnings (CARE) scheme model with pension age linked to state pension age to be adopted for general use in the public service schemes; and
  - to adopt this approach consistently for each of the different public sector pension schemes in line with their equivalent scheme in Great Britain and not to adopt different approaches for Northern Ireland.
4. The Minister of Finance and Personnel announced a proposal for a Public Service Pensions Bill in the Assembly on 26 November 2012. The Bill will give effect to the principles for pension reform agreed by the Executive. These reforms were recommended by the Independent Public Service Pension Commission in its final report published in 2011<sup>1</sup>.
5. The Independent Public Service Pension Commission reported that the public service pension structure in the United Kingdom has not responded flexibly to rising costs and increases in longevity over recent decades. The final report recommended the adoption

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<sup>1</sup> The final report of the Independent Public Service Pensions Commission was published on 10 March 2011, [http://cdn.hm-treasury.gov.uk/hutton\\_final\\_100311.pdf](http://cdn.hm-treasury.gov.uk/hutton_final_100311.pdf)

of a new pension scheme design which would address the impact of long term scheme costs for taxpayers and employers. The report also recommended a general increase in pension age across the public service schemes and, with the exception of those for the uniformed services, that public service scheme pension ages should be linked to State Pension Age.

6. The proposed Public Service Pensions Bill will have cross-cutting effect for the devolved public service schemes in Northern Ireland. It provides a framework containing core provisions for pension reform which will extend across public service schemes made for the following classes of public service employments:
  - civil servants;
  - devolved judiciary;
  - local government workers;
  - teachers;
  - health service workers;
  - fire and rescue service workers; and,
  - members of the police service.
7. The powers in the Bill will supersede existing powers to create schemes for the payment of pensions and other benefits for the employments and devolved offices listed which are contained in the following legislation:
  - Superannuation (Northern Ireland) Order 1972 (Civil servants, local government workers, teachers, health service workers);
  - Fire Services (Northern Ireland) Order 1984 (continued by Article 60 of the Fire and Rescue Services (Northern Ireland) Order 2006 (Fire and rescue service workers);
  - Police (Northern Ireland) Act 1998 (Police Officers); and,
  - Judicial Pensions and Retirement Act 1993 (Devolved Judicial Offices).
8. The policy intention is for the reforms to apply to all public sector employments. The Bill will contain powers for the Department of Finance and Personnel to specify by order named public sector bodies, offices, or descriptions of bodies or offices, not captured by the categories given at paragraph 6 to which the core provisions will apply.

## **CONSULTATION**

9. The Department of Finance and Personnel is engaged in central consultation on the Bill between representatives from the Northern Ireland Ministerial Departments with responsibilities for the main public service pension schemes and a collective trades union grouping led by the Northern Ireland Committee of the Irish Congress of trade Unions which represents each of the public service employments within the Bill's remit.

10. The Department of Finance and Personnel consulted publicly from 21 January 2013 to 15 April 2013 on the policy carried in the Bill<sup>2</sup>.

## **OPTIONS CONSIDERED**

11. Two policy options were considered. Firstly, to retain the existing regime for public service pension provision. The second option was to commit to the policy for a new career average revalued earnings (CARE) scheme model with pension age linked to state pension age to be adopted for general use in the public service schemes; and to adopt this approach consistently for each of the different public sector pension schemes in line with their equivalent scheme in Great Britain and not to adopt different approaches for Northern Ireland. The second approach was agreed by the Executive on 8 March 2012.
12. Two options were also considered for the legislative route to be used give effect to the Executive's policy decision of 8 March 2012. Firstly, for the agreed policy for reform to be legislated for in the Westminster Public Service Pensions Act 2013, which received Royal Assent on 25 April 2013. The second option considered was to introduce a Public Service Pensions Bill in the Assembly. On 22 November 2012 the Executive declined to request a legislative consent motion to extend the Westminster Bill and on 26 November 2013 the Minister of Finance and Personnel announced to the Assembly his intention to introduce a Public Service Pensions Bill.

## **OVERVIEW**

13. The Bill consists of 37 clauses and 9 Schedules.

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<sup>2</sup> 'Consultation on proposals to Reform Public Service Pensions from April 2015' is published on the Department of Finance and Personnel website at: [www.dfpni.gov.uk/civilservicepensions-ni/policy\\_consultation\\_document](http://www.dfpni.gov.uk/civilservicepensions-ni/policy_consultation_document). The Department of Finance and Personnel published an official response to the consultation on 21 May 2013 [www.dfpni.gov.uk/civilservicepensions-ni/index/latest-news/public\\_service\\_pensions\\_bill.htm](http://www.dfpni.gov.uk/civilservicepensions-ni/index/latest-news/public_service_pensions_bill.htm)

## **COMMENTARY ON CLAUSES**

### ***Establishment of new schemes***

#### **Clause 1: Schemes for persons in public service**

This clause contains the main enabling power for new public service pension schemes and schemes providing other benefits, such as injury and compensation benefits made under this Bill. The schemes are to be made in regulations, which will contain detailed provisions for the payment of pensions or other benefits. These schemes are required to be made in compliance with the framework conditions set out in the rest of the Bill. The creation of a consistent, legal framework for all public service pension schemes was a recommendation of the Independent Public Service Pensions Commission.

*Subsection (1)* enables schemes to be established which provide pensions or other benefits (such as injury and compensation benefits) to the main categories of persons in public service listed in *subsection (2)*. The definition of those main categories is further set out in Schedule 1 (to which *subsection (3)* cross-refers).

The detail of specific pension and other benefits schemes is to be set out in regulations. These regulations are called “scheme regulations”, as set out in *subsection (4)*.

#### **Clause 2: Responsible authority for schemes**

*Subsection (1)* enables those departments listed in Schedule 2 to make scheme regulations for the main categories of persons in public service. The department with the power to make scheme regulations for a main category of persons in public service is described in *subsection (2)* (and in the Bill as a whole) as the “responsible authority” for the scheme.

#### **Clause 3: Scheme regulations**

Clause 3 contains additional provisions about how the power to make scheme regulations under the Bill may be used.

By *subsection (1)*, scheme regulations can make such provision as the responsible authority considers appropriate, provided they are in accordance with the requirements in the rest of the Bill. For clauses that limit the type of provision that may be made, or which require provisions of a specific kind to be included, see for example:

- clause 4, which requires schemes to have a scheme manager who is to be responsible for managing or administering the scheme;
- clause 5, which requires schemes to provide for the establishment of a pension board to assist the scheme manager with certain matters;

- clause 7, which requires schemes to provide for the establishment of a scheme advisory board to advise on certain matters;
- clause 8, which sets constraints on the design of schemes, including requiring schemes that are defined benefits schemes to provide those benefits through a “career average revalued earnings scheme” (or CARE scheme) or such other description of defined benefits scheme as the Department of Finance and Personnel may specify in regulations (but not a final salary scheme);
- clause 9, which provides for the revaluation of pensionable earnings of a person in a CARE scheme in accordance with changes in prices or earnings as set out in an annual order made by the Department of Finance and Personnel;
- clause 10, which contains requirements relating to the normal pension age of schemes made under this Bill; and,
- clauses 11 and 12, which require scheme regulations to contain a mechanism for regular valuations of the scheme and to provide for a cap on the costs to employers of public service schemes.

The provisions which can be made include in particular, as *subsection (2)(a)* says, any matter set out in Schedule 3. That Schedule sets out a non-exhaustive list of matters which can be included in scheme regulations for public service pension schemes. If a matter is not mentioned in Schedule 3 that does not prevent it from forming part of such a scheme provided it is within the powers given by clauses 1(1) and 3(1).

Scheme regulations may also include consequential, supplementary, incidental or transitional provisions (see *subsection (2)(b)*).

*Subsection (3)(a)* allows scheme regulations to make different provision for different cases, including different provision for different descriptions of persons. This is a common provision in regulation-making powers to ensure that they are appropriately flexible. For example, it would allow schemes to be deemed ‘connected’ (under clause 4(6)) for some purposes but not for others.

*Subsection (3)(b)* allows scheme regulations to include provisions that have retrospective effect (in relation to a period that precedes the regulations coming into force), subject to clause 23 (which sets out procedural requirements that apply to the exercise of the power to make retrospective provision). Such powers are common in public service pensions legislation. For example, it may be necessary to adjust schemes to accommodate changes in law or where it would not be desirable to delay the benefit of a particular change but where time is required to consider the consequences and appropriate method of making the change.

*Subsection (3)(c)* allows scheme regulations to give persons who have functions under the regulations discretion in carrying out those functions. This permits ministers or other scheme managers, for example, to make their own decisions within a framework set by scheme regulations.

*Subsection (4)* allows scheme regulations to amend primary or secondary legislation for consequential purposes. Only primary legislation passed before or within the period of 12 months from the date on which the Bill receives Royal Assent can be amended. This power may be necessary where legislation is inconsistent with or requires modification as a consequence of scheme regulations or a provision of this Bill. Clause 24(1)(a) further states that any amendment to primary legislation must be made by the affirmative procedure. The meaning of ‘affirmative procedure’ is given in clause 34.

*Subsection (5)* provides that scheme regulations made under powers in this Bill require consent of the Department of Finance and Personnel.

The Department of Finance and Personnel intends to put in place appropriate arrangements to ensure that requirements for consent under this clause, or where applicable for the administrative approval of other spending commitments, are exercised in a way that balances appropriate scrutiny with administrative efficiency.

## ***Governance***

### **Clause 4: Scheme manager**

*Subsection (1)* provides that scheme regulations must provide for a person to be responsible for managing or administering a public service pension scheme set up under the powers in the Bill and any other statutory pension scheme connected with it.

That person is referred to in the Act as the “scheme manager” – see *subsection (2)*.

*Subsection (3)* provides that the scheme manager may, in particular, be the responsible authority (who, under clause 2(1), is also responsible for making the scheme regulations which create the scheme). However, the regulations may provide for some other person, or a number of persons, to be responsible for managing or administering the scheme or a part of the scheme.

*Subsection (4)* provides that regulations for injury or compensation schemes do not have to provide for a scheme manager. Such schemes are outside of the new governance arrangements which the Bill requires of public service pension schemes.

*Subsection (5)* allows scheme regulations to provide for more than one scheme manager in that scheme and for any other statutory scheme connected with it, and for each scheme manager to be responsible for different parts of those schemes.

*Subsection (6)* explains that another statutory pension scheme is connected with a public service pension scheme set up under clause 1 if and to the extent that it provides for persons of the same description, unless the scheme regulations state that the schemes are not to be regarded as connected (see *subsection (7)*). For example, a public service pension scheme set up for the civil service under the Bill would be connected with any existing schemes for the civil service. The effect is that the regulations must set out the person who is to be responsible for running a new pension scheme in respect of persons set out in clause 1(2) and any connected predecessor schemes for those persons. This will allow the scheme manager to have administrative responsibility for all relevant existing pension schemes relating to the same service.

*Subsection (7)* allows for situations where an existing statutory scheme and its successor scheme are not to be managed together for some or all purposes. For example, the new civil service pension scheme is likely to make provision for persons of the same description provided for under existing public body pension schemes. However, it may be appropriate for some of those existing schemes to continue to be managed separately from the new civil service pension scheme.

The scheme manager has certain specific responsibilities under the Bill (for example, see clauses 14 and 15). Scheme managers, whether or not they are also the responsible authority, will be able to delegate aspects of their management and administration responsibilities if the scheme regulations allow (see paragraph 13 of Schedule 3).

## **Clause 5: Pension board**

This clause requires public service pension schemes set up under clause 1 to establish a pension board. The board's role is to assist the scheme manager in securing the effective and efficient governance and administration of the pension scheme and any statutory scheme connected with it.

The pension board will, in particular, be charged with helping the scheme manager to ensure the scheme is operated to an appropriate standard. It will have the responsibility of assisting the scheme manager in relation to the matters set out in *subsection (3)*. These matters include ensuring that schemes are administered in accordance with all relevant legislation concerning the governance and administration of public schemes and any requirements imposed on the scheme by the Pensions Regulator. The pension board will be required to discharge these functions in relation to a public service pension scheme set up under clause 1 and any statutory pension scheme connected with it. This mirrors the provisions for scheme managers. For example, a pension board for a new civil service pension scheme will also be required to assist and advise the scheme manager in respect of existing civil service pension schemes.

In all cases, the scheme manager will retain ultimate responsibility for the administration and governance of the scheme. The role of the pension board is to support the scheme manager in fulfilling that responsibility and, by virtue of *subsection (3)(b)*, in securing compliance with

any requirements imposed by the Pensions Regulator. It will be for the scheme regulations and the scheme manager to determine precisely how the pension board carries out its role.

*Subsection (2)* provides that in the case of a scheme made under clause 1(2)(c) for local government workers the Local Government Officers' Superannuation Committee (NILGOSC) may be the pension board.

*Subsection (4)* provides that when making scheme regulations the responsible authority must have regard to the desirability of securing the effective and efficient governance and administration of the scheme.

*Subsections (5) and (6)* are concerned with the balance of employer/employee representatives on the pension board and with conflicts of interest. Schemes must have an equal number of persons appointed to represent employees and employers on the board. There are also likely to be other board members representing different interests. *Subsections (5) and (6)* prevent a person from being a member of a pension board where they have another interest that could prejudice them carrying out the role.

Under *subsection (5)(a)*, the scheme manager (who is responsible for appointing the members of the pension board) must ensure that no conflict of interest exists at the time of appointment and while the member continues to serve. This provision would not prevent a person who is a member of the pension scheme to which the pension board relates (or a representative of members, or of employers) from being a member of the pension board.

Under *subsection (5)(b)*, a prospective pension board member must provide adequate information to the scheme manager to establish that a conflict of interest does not exist.

Under *subsection (5)(c)*, equal numbers of employer and member representatives must be appointed to the pension board. Each category is defined in *subsection (7)*, which provides that employer representatives are persons appointed for the purpose of representing employers for the scheme and any connected scheme, while member representatives are persons appointed for the purpose of representing members of the scheme and any connected scheme. The provision does not mean that the pension board will necessarily consist only of these two groups. Schemes may appoint other persons to their board. For example, it is possible there could be representatives of the responsible authority and the scheme manager as well as independent board members.

*Subsection (6)* explains that a conflict of interest means a financial or other interest which is likely to prejudice how a member carries out his or her duties (but not a financial or other interest arising merely from membership of the scheme or a connected scheme). This does not include other interests such as a mandate to represent the interests of scheme members or those of employers (which may be relevant but could not be said to be prejudicial).



*Subsection (9)* exempts injury and compensation schemes from the requirement to have a pension board. Such schemes are not subject to the remit of the Pensions Regulator or the legislation relating to the governance and administration of pension schemes.

#### **Clause 6: Pension board: information**

This clause aims to ensure that information about the pension board is available to scheme members and other interested parties, so that they can easily see and understand: who is a pension board member; how pension scheme members are represented on the pension board; and what the responsibilities of the pension board are.

#### **Clause 7: Scheme advisory board**

Clause 7 requires a scheme advisory board to be established in each pension scheme made under clause 1 of the Bill. Policy groups have previously been set up under administrative arrangements in the existing public service pension schemes, but this clause requires them to be written into the scheme regulations for schemes made under the powers in the Bill. The existing policy groups have been set up under administrative arrangements, but this clause requires them to be written into the scheme regulations.

The scheme advisory board is distinct from the pension board or boards established under clause 5. A pension board exists to assist in the management and administration of the scheme, whereas the scheme advisory board's role will be to advise the scheme manager on the desirability of changes to the scheme. Clauses 5 and 7 ensure a clear separation of these roles.

*Subsection (1)* provides that the scheme regulations must establish a scheme advisory board in each scheme and provides that their role is to advise the responsible authority, at the authority's request, on the desirability of changes to the scheme. The responsible authority may therefore commission the scheme advisory board to advise on any matter in relation to the scheme that the responsible authority considers appropriate. It is open to the responsible authority to set out any commission in the scheme regulations themselves or through any other means they determine. Any commission may be framed as an open request for regular advice on a range of issues, through to a narrow requirement for advice on a specific issue. It will be for each responsible authority to determine what advice the scheme advisory board is responsible for providing.

*Subsection (2)* allows for the scheme regulations to provide a scheme advisory board with an additional role in the event that schemes will have a number of scheme managers and pension boards. The clause provides that the scheme advisory board may be given responsibility to advise them on the effective and efficient administration and management of the scheme, any connected scheme and any pension fund. It will be for the scheme regulations to determine the exact responsibilities of the scheme advisory board, if any, in these areas.

*Subsection (3)* requires the responsible authority, the scheme managers and pension boards to have regard to advice given to them by a scheme advisory board under subsection (1) or (2). This does not mean that they have to follow the advice of the board, but does mean they must consider the advice, and be able to justify taking a different approach.

*Subsections (4) and (5)* mirror the conflict of interest requirements placed on pension boards. The provision prevents persons from being a board member where they have a conflicted interest that would prevent them from undertaking the responsibilities of that position.

## ***Design***

### **Clause 8: Types of scheme**

Clause 8 specifies the types of pension scheme that can be set up under the Bill.

*Subsection (1)* provides that the types of scheme which may be provided for in scheme regulations include defined benefits schemes, defined contributions schemes, and schemes of any other description. The meaning of defined contributions and defined benefits schemes is set out in clause 33 (general interpretation). There is therefore a broad power to create pension and benefit schemes of different designs, subject to the restrictions that the rest of the clause applies to defined benefits schemes, and to the other restrictions set out in the Bill.

*Subsection (2)* sets out that any defined benefits scheme must be either a “career average revalued earnings scheme”, or another type of defined benefits scheme specified in regulations made by the Department of Finance and Personnel.

*Subsection (3)* stipulates that final salary scheme designs may not be specified by Department of Finance and Personnel regulations. They are not a permitted form of defined benefits scheme.

*Subsection (4)* sets out the meaning of “career average revalued earnings schemes” (CARE schemes) for schemes made under clause 1. In this type of scheme, members build up pension in each year of active membership based on their pensionable earnings in that year. The pension accrued in that way is then revalued each year until the person leaves pensionable service. The measure of revaluation varies from scheme to scheme and will be provided for in scheme regulations, subject to the arrangements in clause 9 (revaluation). *Subsection (5)* provides that regulations under this clause are subject to negative resolution of the Assembly, which is defined in Section 41(6) of the Interpretation Act (Northern Ireland) 1954.

### **Clause 9: Revaluation**

Clause 9 deals with the procedure for revaluing the earnings of active members of pension schemes made under clause 1, where those earnings (or a proportion of those earnings) are used to accrue pension benefits. It is concerned with the revaluation of the accrued pension of

active members of schemes and not the uprating or indexation of pensions that are deferred or in payment (for this see the Pensions (Increase) Act (Northern Ireland) 1971, and the consequential amendments in Schedule 8 to this Bill).

By *subsection (1)*, clause 9 applies to schemes made under clause 1 of the Bill where scheme regulations provide for the pensions of members of those schemes to be revalued (until those members leave pensionable service of that scheme) by reference to changes in prices or earnings over a period specified in the regulations. This will apply to all CARE schemes and, it is envisaged, the vast majority of pension schemes created under the powers in the Bill.

*Subsection (2)* provides for the Department of Finance and Personnel to make orders which specify the percentage increase or decrease in prices or earnings for the purposes of the revaluation. It ensures that the measures of prices and earnings are used and applied on a consistent basis for revaluation across public service pension schemes.

*Subsection (3)* sets out that the Department of Finance and Personnel may determine the change in prices or earnings, by reference to the general level of prices or earnings, which is to be estimated by the Department of Finance and Personnel in a manner that it considers to be appropriate.

*Subsection (4)* states that an order under this clause must be made annually and may make different provision for different purposes. This is to allow some flexibility to give effect to different agreements on revaluation made with representatives of members of different schemes. For example, the agreed scheme design for firefighters could include revaluation of accruals by reference to the general change in earnings, whereas the agreed scheme design for civil servants could include revaluation of accruals by reference to the general change in prices.

*Subsection (5)* sets out the procedure for Department of Finance and Personnel orders under this section. In cases where the order specifies a percentage decrease (which could happen where changes in prices or earnings are negative) it is subject to the affirmative Assembly procedure (as defined in clause 34). In all other cases, the order is subject to the negative procedure.

*Subsection (6)* disregards any gap in a person's pensionable service of up to five years for the purposes of subsection (1), so accruals are revalued during the gap as if the person were an active member. This is to allow those persons who have taken a break from pensionable service of less than five years to be treated, for pension purposes, as if they had remained in pensionable service in the scheme. It relates only to the revaluation of benefits already accrued in the scheme and does not give pensionable rights in relation to the years not served in public service.

## **Clause 10: Pension age**

This clause provides for the normal pension age and deferred pension age of members of most public service pension schemes to be the same as their state pension age, or 65, whichever is greater.

*Subsection (1)* requires a scheme made under the powers in clause 1 to make the normal pension age for members of that scheme the same as their state pension age, or 65, whichever is greater. The floor of age 65 is to account for the gender disparity in state pension ages at present, which is due to be equalised at 65 by 2018. “Normal pension age” is defined in *subsection (6)(a)* as the earliest age at which a member of the scheme is entitled to receive unreduced benefits upon retirement from active membership. “State pension age” is defined in *subsection (6)(c)* by reference to a person’s pensionable age as set out in Schedule 5 to the Pensions (Northern Ireland) Order 1995.

*Subsection (2)* excepts fire and rescue workers who are firefighters and members of the police service from the requirement to link normal pension age to state pension age in *subsection (1)*. It provides that the normal pension age for firefighters should be specified in scheme regulations for the firefighters pension scheme, and such regulations may specify any age not exceeding 60, but not less than 55. It provides that the normal pension age for members of the police service must be 60. These groups historically have lower pension ages than other public servants in recognition of the unique characteristics of the work they do.

*Subsection (4)* requires a scheme made under clause 1 to make the deferred pension age for members of that scheme the same as their state pension age, or 65, whichever is greater. Again, the floor of age 65 is to account for the gender disparity in state pension ages at present. “Deferred pension age” is defined in *subsection (6)(b)* as the earliest age at which a member of a scheme is entitled to receive unreduced benefits under the scheme after leaving active service before reaching normal pension age.

*Subsection (5)* requires any changes to normal or deferred pension age which occur as a result of a change in state pension age to apply to the calculation and payment of all benefits earned in a scheme to which that pension age is relevant. This includes benefits accrued in that scheme before the change in state pension age.

This clause also applies to new schemes set up for other public bodies (see clause 30(1) (new public body pension schemes)).

The effect of this clause is to require normal and deferred pension ages in schemes made under powers in the Bill, or governed by provisions in it, to change in line with any change to state pension age. So, where state pension age increases by one year the relevant normal and deferred pension ages would need to increase by one year. The increase would apply to all relevant benefits earned in a scheme set up under the Bill where the normal and deferred pension age have been linked to state pension age. This will mean that if the state pension age changes, an active member of a scheme set up under the power in clause 1 will take their

entire relevant pension entitlements in that scheme at the new normal pension age, including those earned before the change to state pension age. It will not affect pension benefits that were accrued before the scheme member transferred into the public service pension scheme set up under or governed by the Bill. Those pension benefits may be taken at the normal pension age for the scheme in which they were accrued, and on the terms that apply to that scheme.

### ***Cost Control***

#### **Clause 11: Valuations**

This clause sets out that defined benefits schemes made under clause 1 must be actuarially valued in accordance with Department of Finance and Personnel directions.

*Subsection (1)* requires scheme regulations to provide for actuarial valuations that will cover both defined benefits pension schemes that are created by, or governed by, the Bill and any connected scheme. clause 4(6) defines a connected scheme as one which covers employees who are employed in the same kind of public service as the new scheme, provided they are not excepted from this rule under scheme regulations.

*Subsections (2) and (3)* set out that the valuations must be carried out in accordance with Department of Finance and Personnel directions. Those directions may specify key details on how valuations should be carried out, including:

- how and when the valuation is to be carried out;
- the time periods over which a valuation will measure a scheme's assets and liabilities;
- the data, methodology and assumptions to be used in valuations;
- the matters that must be covered by the valuations (which may relate to the outputs that must be produced);
- how valuations of new and connected schemes will be combined, where they are to be valued together; and
- the time period for implementing changes to the employer contribution rate as a result of the outputs of the valuation.

*Subsection (4)* requires the Department of Finance and Personnel to consult the Government Actuary before making, revoking, or amending directions.

*Subsection (5)* requires the Department of Finance and Personnel to consult with persons, or representatives of persons, likely to be affected before making directions under clause 11.

*Subsection (6)* provides that scheme regulations for other kinds of schemes, such as injury and compensation schemes, may provide for actuarial valuations of that scheme and any connected scheme. This will allow for those schemes to be valued alongside a pension scheme if this is appropriate.

## **Clause 12: Employer cost cap**

This clause requires scheme regulations for defined benefits schemes made under clause 1 to set an employer cost cap and sets out how this cap should be set, measured and operated. The clause does not apply to defined contributions schemes, or injury and compensation benefit schemes, as these schemes do not require this type of cost control.

*Subsections (1) and (2)* require scheme regulations to set a rate, known as the employer cost cap, which is to be used for measuring the costs of a scheme made under clause 1 and, subject to Department of Finance and Personnel directions made under this section, those of any connected schemes as defined in clause 4(6).

*Subsection (3)* provides that the cap is to be set in accordance with Department of Finance and Personnel directions.

*Subsection (4)* gives non-exhaustive examples of what those Department of Finance and Personnel directions may cover. They may, in particular, specify how the first valuation under clause 11 will be taken into account when setting the cap, and how costs or changes in costs at subsequent valuations are to be taken into account when measuring the costs of the scheme against the employer cost cap (the comparison that will be made at subsequent valuations).

The directions may also specify to what extent the costs of connected or other schemes are to be taken into account when setting the employer cost cap.

*Subsection (5)* requires the Department of Finance and Personnel to make regulations to determine how the cap will operate. Department of Finance and Personnel regulations will:

- set margins either side of the cost cap; and
- specify the target cost (within those margins) that the scheme should take action to return costs to if the costs of the scheme go beyond those margins.

*Subsection (6)* makes provision for scheme regulations to specify the processes to be followed to reach agreement on the action to be taken if the cost of the scheme arising from a second or subsequent valuation does not fall within the margins set out in Department of Finance and Personnel regulations. A default action may also be specified if there is no agreement.

*Subsection (7)* provides that the action taken to bring the scheme costs within the margins may include an increase or decrease in members' benefits or contributions. It is not envisaged that such action will affect any pension already built up in the scheme.

*Subsection (8)* allows Department of Finance and Personnel regulations to make consequential and supplementary provision. It also allows regulations to make different provision for different schemes with regard to the way the employer cost cap is set, measured and operated.

*Subsection (9)* provides that Department of Finance and Personnel regulations under this section are subject to the negative procedure in the Assembly.

*Subsection (10)* requires the Department of Finance and Personnel to consult with persons, or representatives of persons, likely to be affected before making directions or regulations under clause 12.

### **Clause 13: Employer contributions in funded schemes**

Clause 13 provides for the setting of the rate of employer contributions in defined benefits schemes with a pension fund, most notably the funded Local Government Pension Scheme (Northern Ireland). The clause requires an actuarial valuation of the pension fund to inform the setting of the employer contribution rate. The valuation of the pension fund is separate from and in addition to the valuation of the whole scheme under clause 11. Clause 13 provides for an independent review of the valuation and employer contribution rates to check that they are appropriate and requires remedial action to be taken where that review identifies a problem.

*Subsection (1)* provides that the pension schemes to which the clause applies are defined benefits schemes set up under the Bill which have a pension fund. These will be the Local Government Pension Scheme and any other funded defined benefits schemes established under clause 1 in the future.

*Subsection (2)* requires the scheme regulations of a funded scheme made under clause 1 to set the employer contribution rates so that they meet two specified objectives. These objectives are to ensure that the rates of employer contributions are set at a level that is sufficient to ensure the solvency of the pension fund and the long-term cost-efficiency of the part of the scheme to which that fund relates. The valuation will take into account the current and anticipated liabilities of the scheme; the effect of these objectives is to ensure that those liabilities are provided for in a prudent manner.

The terms "long-term cost-efficiency" and "solvency" are not defined in the Bill. Long-term cost-efficiency implies that the rate must not be set at a level that gives rise to additional costs. For example, deferring costs to the future would be likely to result in those costs being

greater overall than if they were provided for at the time. Solvency means that the rate should be set at such a level as to ensure that the scheme's liabilities can be met as they arise.

*Subsection (3)* provides that scheme regulations must require the pension fund to be subject to actuarial valuation. Provisions in the scheme regulations will require the scheme actuary to set the employer contribution rate for the pension fund.

*Subsections (4), (5), and (7)* require an appropriately qualified person to be appointed by the responsible authority to review the actuarial valuation and employer contributions rates and publish the findings of that review.

The person appointed must not be:

- an employee of the responsible authority;
- the scheme manager;
- a scheme member, or
- an employee of the Department of Finance and Personnel.

The review will consider whether the valuation is in compliance with the scheme regulations, whether it is consistent with other valuations under the scheme, and whether the employer contributions rates were set as required by subsection (2).

The purpose of the review is to provide an independent verification of the assessment of the scheme's assets and liabilities and to confirm whether appropriate employer contributions will be paid to meet those liabilities. The independent person's report must be published (subsection (5)).

*Subsection (6)(a)* provides that where the review identifies a problem with the valuation or the employer contribution rates the independent person may recommend how these can be corrected. Regardless of whether or not the review recommends actions, the scheme manager of the scheme is required by *subsection (6)(b)* to take steps to remedy any problem identified by the review. The scheme manager is also required to set out publicly what actions have been taken and why.

Where there has been an adverse review, *subsection (6)(c)* provides that the responsible authority may require the scheme manager to report on progress in taking remedial steps. The responsible authority may also direct the scheme manager to take such steps as he or she considers are needed to correct the problem. These powers are expected to be used as a last resort; for example, where the scheme manager is not (in the opinion of the responsible authority) taking appropriate remedial steps, or is delaying doing so.



#### **Clause 14: Information about benefits**

Clause 14 provides for scheme regulations to require scheme managers (for defined benefit schemes under clause 1) to provide active pension scheme members with benefit information statements in accordance with the requirements of this clause.

*Subsection (2)* sets out the matters that must be included in benefit information statements. Such statements would need to include details of the pension benefits that the person had earned in the scheme and any other information specified in a Department of Finance and Personnel direction.

*Subsections (2)(b), (3) and (6)* provide for Department of Finance and Personnel directions to specify requirements as to the information to be included, how that information is presented, and how that information is to be provided. The purpose of these directions is to ensure members of all pension schemes are provided with clear and comprehensive information to enable them to understand their pension benefits.

*Subsections (4) and (5)* set out when such statements must be provided.

Under clause 17 and Schedule 4 to the Bill the Pensions Regulator has a role in overseeing the provision of benefit information statements. Benefit information statements are listed under paragraph 14 of Schedule 4 as a matter on which the Regulator must issue a code of practice. Additionally, they are also matters on which the Regulator can take enforcement action should schemes fail to comply with their duties.

This clause also applies to new schemes set up for other public bodies (see clause 30(1) (new public body pension schemes)).

#### **Clause 15: Information about schemes**

Clause 15 is concerned with the collection and publication of information about schemes under clause 1. It allows the Department of Finance and Personnel to direct schemes to publish information or to provide information to the Department of Finance and Personnel, and to specify how and when that information is to be published or produced.

The purpose of this clause is to improve the transparency of public service pension schemes. It is intended to be used to ensure that information is publicly available to allow comparisons to be made across schemes on: their financial position; costs to members and other taxpayers; their assets and liabilities (including how those are managed); membership demographics; and administration and governance standards. It is intended to allow for matters such as the format, methodology and data to be included in published information to be set centrally and applied consistently across all of the public service schemes governed by the Bill. This is intended to ensure that information is produced to common standards and timing, which will make it easier to compare public service pension scheme information and for members and taxpayers to hold schemes to account.

Responsible authorities will continue to be able to publish information independently. This clause is also intended to allow the Department of Finance and Personnel to collect centrally all of the information it requires to carry out its functions under the Bill; for example, the setting of valuations methodologies under clause 11.

*Subsection (1)* allows the Department of Finance and Personnel to direct scheme managers or a responsible authority to publish information themselves or to provide it to the Department of Finance and Personnel. Information provided to the Department of Finance and Personnel may be collated and published centrally.

*Subsection (2)* explains that the information referred to in subsection (1) relates to information about the scheme itself and other statutory schemes that are connected with it.

*Subsection (3)* gives example of the types of information which schemes may be directed to publish or provide. It includes, for example, scheme accounts and information about scheme membership.

*Subsection (4)* provides that a Department of Finance and Personnel direction may specify how and when information is to be published or provided.

*Subsection (5)* stipulates that a Department of Finance and Personnel direction cannot require schemes to publish or provide information that could not otherwise be lawfully provided. This protection means that schemes cannot be required to publish or provide information in breach of data protection obligations or the laws which govern the confidentiality of an individual's tax and social security affairs.

#### **Clause 16: Records**

Clause 16 allows the Department for Social Development to make regulations requiring scheme managers of pension schemes made under clause 1 (and any connected schemes) to keep specified records. This will include, for example, information about contributions due to the scheme. The regulations may also cover new public body schemes (and any connected schemes) by virtue of the application of clause 16 to such schemes by clause 30. Regulations under this clause are subject to the negative procedure.

#### **Clause 17: Regulatory oversight**

Clause 17 makes provision about the regulatory responsibility of the Pensions Regulator, established under the Pensions (Northern Ireland) Order 2005, in relation to the governance and administration of public service schemes made under the Bill, connected schemes and other public service pension schemes (including, for example, certain existing public service schemes listed in Schedule 5 and new public body schemes which may be created after April 2015).

*Subsection (1)* introduces Schedule 4, which amends the 2005 Order to extend the Pensions Regulator's role in respect of those schemes.

*Subsection (2)* provides a power for the Department for Social Development by order to make provision consequential on the amendments set out in Schedule 4 and to make further or connected provision for the regulation of public service pension schemes within the meaning of the Pensions (Northern Ireland) Order 2005.

*Subsection (3)* provides that the power at subsection (2) includes a power to amend primary legislation (including this Bill).

*Subsection (4)* allows for an order under this clause to make different provision for different purposes, enabling the correct level of regulatory oversight to be applied in each individual circumstance, if required.

*Subsection (5)* provides that where such an order makes amendments to primary legislation, it will be subject to the confirmatory procedure. This means it must:

- be laid before the Assembly after being made; and
- takes effect on such date as may be specified in the order, but ceases to have effect upon the expiration of a period of 6 months from that date unless at some time before the expiration of that period the order is approved by a resolution of the Assembly.

### ***Transitional***

#### **Clause 18: Restriction of existing pension schemes**

Clause 18 provides that benefits may not be provided under existing pension schemes in relation to service after the closing date for the scheme. Its effect is to bring to an end further accrual of pension benefits in existing schemes, except where transitional arrangements have been agreed to allow those who are closest to retirement to continue to accrue benefits under the scheme. The transitional arrangements for each scheme may vary within the parameters set by the Bill.

*Subsection (1)* prohibits the provision of benefits under an existing scheme for service after the closing date for that scheme, as provided by subsection (4). Subsection (1) does not require the scheme to be wound up, and will not crystallise the liabilities in that scheme.

*Subsection (2)* specifies that "existing schemes" for the purposes of the Bill are those listed in Schedule 5.

*Subsection (3)* provides that the above restriction does not apply to defined contribution schemes or to the benefits specifically excepted by Schedule 5, which are injury and compensation benefits.

*Subsection (4)* sets out that the closing date mentioned in subsection (1) is 31st March 2015 or, in the case of the Local Government Pension Scheme 31<sup>st</sup> March 2014. The Department of the Environment is to bring regulations for its reformed scheme into force one year earlier than the other major public service schemes.

*Subsection (5)* permits scheme regulations to provide exceptions to subsection (1) for:

- persons who were, or were eligible to be, members of an existing scheme immediately before 1st April 2012; and
- for other persons who ceased to be, or to be eligible to be, members of existing schemes before that date.

*Subsection (6)* permits scheme regulations to also provide exceptions to subsection (1) for:

- persons who were, or were eligible to be, members of an existing public body scheme immediately before 1st April 2012; and
- for other persons who ceased to be, or to be eligible to be, members of existing public body schemes before that date.

This provision is permissive, but not mandatory; schemes may decide not to adopt transitional arrangements if they wish. It is anticipated that schemes will, in practice, provide transitional protections.

Such exceptions may, by *subsection (7)*, be framed in particular by reference to a person reaching normal pension age under their existing scheme, or another age, or to the satisfaction of another condition before a particular date. These exceptions are to permit the various transitional arrangements that have been agreed as part of developing reformed public service pension schemes, and to enable delivery of the new Fair Deal policy (to which clause 29 and Schedule 9 are also relevant).

*Subsection (8)* allows for additional transitional provisions for those who do not fall within the categories that scheme regulations provide under subsection (6). These provisions may extend qualified transitional arrangements for up to a further four years. This subsection allows the impact of reformed schemes to be moderated for those who fall just outside of the main categories for which transitional protection has been agreed. This is typically people who are between 10 and 14 years from retirement in their existing schemes. These ‘tapering’ provisions are designed to afford protection to those scheme members who do not benefit from full exemption under transitional agreements.

*Subsection (9)* allows the arrangements under subsections (5), (6) and (8) to be provided by amending existing schemes through scheme regulations.

*Subsection (10)* clarifies that death in service benefits are included within the reference to “benefits” in subsection (1).

### **Clause 19: Closure of existing injury and compensation schemes**

Clause 19 deals with existing injury and compensation schemes. *Subsection (1)* permits scheme regulations to provide for the closure or restriction of existing schemes that provide for the payment of benefits relating to compensation for loss of office and for injury benefits, as listed in Schedule 6. The Bill does not set a date or require a date to be set for the closure of these injury and compensation schemes.

The schemes listed in Schedule 6 relate to employment in the civil service, fire service, local government, health service, the police and teaching. These injury benefit and compensation schemes are for the most part separate from the pension schemes for those workforces and their membership is not restricted to persons who are members of those pension schemes.

Clause 1 provides powers for schemes to be made in relation to those workforces in the future (see clause 1 and paragraph 2 of Schedule 3); replacement schemes can be set up in the event that the powers in subsection (1) are used.

*Subsection (3)* provides for schemes to make exceptions to subsection (1). This power could be used to allow for transitional provisions for current members.

*Subsection (4)* provides that closure or restriction may be achieved by amending the existing schemes using scheme regulations made under the Bill.

### **Clause 20: Final salary link**

This clause introduces Schedule 7, which sets out the final salary link that applies to past service in those final salary schemes restricted under clause 18.

### ***Procedure for scheme regulations***

#### **Clause 21: Consultation**

Clause 21 obliges the responsible authority to consult those likely to be affected before making or changing scheme regulations. The current procedures for making changes to current public service pension schemes vary from scheme to scheme. The clause provides a standard requirement for those responsible for making schemes to consult before doing so.

*Subsection (1)* requires the responsible authority to consult the persons (or their representatives) who it considers are likely to be affected by the proposed change before any change is made.

*Subsection (2)* requires the responsible authority to publish a statement of those people and organisations that the authority anticipates would normally be consulted as part of the obligation under subsection (1). This statement must be kept up to date. The purpose of the statement is to make the consultation process more transparent by providing an indication of the organisations and people with whom consultations within a particular scheme are likely to be conducted.

*Subsection (3)* allows any consultation that took place before the commencement of this clause to satisfy the requirements of subsection (1). It is a permissive rather than mandatory provision. It means that schemes do not need to wait until this clause is brought into force before they consult on making scheme regulations, because a consultation carried out before the clause comes into force will satisfy its requirements (provided it is compliant in all other respects).

## **Clause 22: Procedure for protected elements**

The policy intention is that the reforms legislated for under this Bill are designed to last for at least 25 years. This clause specifies enhanced consultation and report procedures for changes to protected elements of a scheme for a period of 25 years. The clause is designed to ensure a high hurdle is set for future proposals to change the design of the schemes.

*Subsection (1)* sets out that the process in subsections (2) to (4) is to be followed in the event that the responsible authority wishes to make changes to the new public service pension schemes that impact on certain elements (the “protected elements”) which have been identified for enhanced protection. Those elements are protected from modification until 31<sup>st</sup> March 2040 (the “protected period”) unless the process is followed. “Protected elements” and “protected period” are defined in *subsection (5)*.

*Subsections (2) to (4)* set out the two parts of the required process. Where a change is proposed to the protected elements during the protected period, the responsible authority must consult those who appear likely to be affected with a view to reaching agreement with them and must lay a report before the Assembly. The requirement to consult with a view to reaching agreement is a higher standard than applies under clause 21.

The responsible authority proposing the change must consult those who appear likely to be affected, either directly or through their representatives (subsection (3)).

Subsection (4) provides that the report to the Assembly must say why a modification to a protected element is proposed within the protected period, having regard to the general desirability of not making such changes in that period.

*Subsection (6)* creates an exception for changes to the protected elements that are caused by the operation of the employer cost cap under clause 12 (see clause 12(6), which envisages consultation resulting in an agreement to implement such changes, unless agreement cannot be reached and a default change is applied). *Subsection (7)* provides that where clause 22

applies, there is no requirement to consult under clause 21 (this is to prevent duplication of the requirement to consult set out in that clause).

### **Clause 23: Procedure for retrospective provision**

Clause 23 provides a procedure to be followed when retrospective provisions are included within scheme regulations proposed by the relevant authority.

*Subsection (1)* provides that where such retrospective provisions appear to the responsible authority to have significant adverse effects in relation to the pension payable to or in respect of members of the scheme, the authority must first obtain the consent of those who appear likely to be affected, either directly or through their representatives (*subsection (3)*).

*Subsection (2)* provides that where the retrospective provisions appear to the responsible authority to have significant adverse effects in any way not covered by subsection (1) in relation to the members of the scheme (for example, a serious adverse effect on injury benefits as opposed to pension benefits), the authority must first consult those who appear likely to be affected, either directly or through their representatives, with a view to reaching agreement.

*Subsection (4)* requires that where subsection (1) or (2) applies the responsible authority must lay a report before the Assembly (as defined in clause 22(5)).

*Subsection (5)* provides that where this clause applies, there is no requirement to consult under clause 21 (this is to prevent duplication of the requirement to consult). The requirement for consent and to consult with a view to reaching agreement is a higher standard than applies under clause 21.

### **Clause 24: Other procedure**

Clause 24 sets out the legislative procedures which apply to the making of scheme regulations. A higher level of Assembly scrutiny is required in each case if scheme regulations are used to amend primary legislation or to make retrospective amendments that appear to the responsible authority to have significant adverse effects in relation to members of schemes.

*Subsection (1)* provides that scheme regulations are subject to the affirmative procedure if they amend primary legislation; make retrospective provision that may adversely affect members of schemes to a significant extent; or are scheme regulations relating to the judiciary (unless the pension board for the judiciary scheme has stated that it considers the regulations to be minor or beneficial).

*Subsection (2)* provides that in all other cases scheme regulations are subject to the negative procedure.

*Subsection (3)* provides that when scheme regulations subject to the negative procedure are combined with regulations subject to the affirmative procedure, the combined regulations are subject to the affirmative procedure.

### ***New schemes: supplementary***

#### **Clause 25: Extension of schemes**

This clause allows schemes made under clause 1 to be extended to persons who are not in the main categories of persons in public service specified there. This is similar to the process where public servants who are not civil servants are admitted to the Principal Civil Service Pension Scheme (Northern Ireland) by inclusion within Schedule 1 of the Superannuation (Northern Ireland) Order 1972. However, this clause is designed to provide a more streamlined and transparent process that can be widely applied across all public service workers.

*Subsection (1)* enables scheme regulations to make provision for pension and other benefits to public service workers who fall within one of the core descriptions of public service workers set out in clause 1 and Schedule 1, but for whom the responsible authority for that scheme could not otherwise make a scheme. This is to enable schemes to extend access, if appropriate, to other core public service workers.

*Subsection (2)* allows scheme regulations to deem persons to fall within a given description of persons in public service where they do not fall within that description. This enables scheme regulations to extend the scheme to persons of any description including those within the core description of public service workers, other public service workers and other workers generally.

*Subsection (3)* permits scheme regulations to specify persons who, though not specified in clause 1(2), may potentially be covered by a scheme made under clause 1. This is to enable scheme regulations to make provision for pension and other benefits to public service and other workers who do not fall within the core descriptions of public service workers. They are potentially covered by a scheme because the further step set out in *subsection (5)* is needed to make the scheme actually relate to some or all of these persons.

*Subsection (4)* gives discretion to the responsible authority to specify under subsection (3) any persons not in the core description of public service workers whom it considers appropriate.

*Subsection (5)* allows the responsible authority to determine which of the persons who have been specified in scheme regulations under subsection (3) are to be covered by the scheme. This gives the responsible authority the ability to admit some or all of a class of specified persons.



The eligibility of those who are not in the core description of public service workers to join a scheme under this clause is, therefore, a two-stage process. First, the persons whom the scheme may cover must be specified in the scheme regulations (that is likely to be done by a generic description). Then, the responsible authority must determine which of those persons are permitted to be members of the scheme. As subsection (5) says, the determination may cover some or all of the specified group.

*Subsection (7)* notes that *subsection (6)*, which applies the terms of the scheme to all workers to whom it is extended by a determination under subsection (5), is subject to any special provisions in the scheme regulations and to a direction made by the responsible authority under subsection (8) for such persons.

Subsection (8) allows for the scheme regulations to provide the responsible authority with powers to make a direction administratively modifying the application of the scheme to persons admitted to the scheme under subsection (2) or (3). The use of such directions must be in accordance with the objectives set out in paragraphs (a) to (c) of subsection (8). This mirrors current procedure in some public service schemes and enables them to extend membership while retaining the flexibility necessary to adapt that extension to any special circumstances.

*Subsection (9)* requires the responsible authority to publish a list of the persons for whom a determination has been made under subsection (5). The list provides a comprehensive and up to date record of the non-public service membership of the relevant scheme. This list must be kept up to date.

*Subsection (10)* allows determinations under subsection (5) to have retrospective effect. This means that the eligibility of persons to join the scheme can be backdated so that it takes effect from a date before the date of the determination. For example, if it is decided in 2016 that a group of persons may enter a scheme, but the scheme regulations are updated later in 2017, it will be possible to admit them with effect from 2016 when the decision was made. Article 1 of the Superannuation (Northern Ireland) Order 1972 contains a similar power to allow the membership of the Principal Civil Service Pension Scheme (Northern Ireland) to be extended with retrospective effect, which is used in similar circumstances.

*Subsection (11)* provides the responsible authority the ability to delegate its powers under subsections (5) to (9) to scheme managers in schemes under clause 1. This delegation will be subject to any conditions imposed by the responsible authority.

Between them, clause 1(2) and clause 25 determine the scope of schemes made under this part. Clause 25 is expected to be used more by so-called “mixed” public service schemes, which have traditionally included members from a wide range of employers (such as the civil service and the local government scheme). It is less likely to be used by schemes that draw their membership from a narrower range of employers or occupations such as the police or firefighters’ schemes.

### **Clause 26: Non-scheme benefits**

This clause allows scheme managers and employers to make payments towards the provision of pensions and other benefits that are not delivered through a scheme made under clause 1 for persons who could have access to such schemes (specifically, both the class of persons described under clause 1(2) and persons to whom a scheme has been extended under clause 25). This will enable employers to contribute to private occupational pension schemes where: members of public service schemes wish to take out or retain private occupational pensions in addition to (or instead of) being members of public service schemes (such as the Northern Ireland Civil Service Partnership Scheme).

*Subsection (2)* makes the use of powers in clause 26 subject to any provisions contained in the scheme regulations. This would allow each scheme to limit or modify how the power to make payments outside the scheme for pensions or other benefits may be used.

### **Clause 27: Consequential and minor amendments**

This clause introduces Schedule 8, which contains consequential and minor amendments to primary legislation that are required because of the provisions in the Bill.

These include amendments to existing scheme legislation, as well as provisions in wider pension legislation to allow the Bill to operate properly.

### ***Existing schemes: supplementary***

#### **Clause 28: Existing local government schemes**

Clause 28 provides for certain regulations made under Article 9 of the Superannuation (Northern Ireland) Order 1972 have effect as if they were scheme regulations made under clause 1 of the Bill. This clause will only apply to regulations under which benefits are provided to or in respect of service on or after 1st April 2014. It will only apply to regulations that provide for pension benefits in respect of service on or after that date. The clause provides that such regulations have effect as if they were scheme regulations for local government workers to the extent that they could have been made under the Bill.

It is intended that reforms to the Local Government Pension Scheme which is made under Article 9 of the 1972 Order, will be brought into force one year earlier than the other major public service schemes. As it is a funded scheme, this will enable the Department of Environment to bring forward savings from reform earlier so that they will be available for other purposes. By allowing these regulations to have effect as if made under clause 1, the scheme will be able to introduce reforms on their chosen timetable while still being able to take advantage of the full powers of the Bill and the protections included in it.

## **Clause 29: Existing schemes for civil servants: extension of access**

This clause introduces Schedule 9, which amends the Superannuation (Northern Ireland) Order 1972 to extend access to schemes made under Article 3 of that Order.

### ***Public body pension schemes***

## **Clause 30: New public body pension schemes**

There are defined benefits pension schemes for those in public service aside from the main schemes for civil servants, local government workers, health service workers, teachers, police, fire and rescue services, and devolved judiciary.

These are pension schemes run for the staff and office holders of non-departmental public bodies, non-ministerial departments, arms length bodies and similar bodies and offices ('public bodies').

Where it is not possible or appropriate for these schemes to be reformed by moving the staff and office holders into one of the new schemes established under clause 1 of the Bill public bodies may be allowed to reform their current schemes or to set up new bespoke pension schemes along reformed lines. This clause deals with the latter situation.

The clause imposes constraints on the design of new pension schemes that may be created under the power in clause 31 for those bodies and offices whose pension schemes are restricted for future accrual and whose members cannot join one of the schemes established under clause 1. It also governs the design of pension schemes that are set up in the future or established under future legislation for public bodies (unless future legislation makes specific, different provision).

*Subsection (1)* identifies the provisions of the Bill which apply to new public body pension schemes. These provisions ensure that such schemes contain the same core design, cost control and governance features of the schemes established under clause 1.

Subject to that, the rules of such schemes can make such provision as the public authority establishing the scheme considers appropriate, because clause 3(1) is applied to them by this subsection.

*Subsection (2)* clarifies that where the provisions identified in *Subsection (1)* apply to a new public body scheme references to scheme regulations in those provisions are to be read as references to the rules of the scheme; and references to the responsible authority are to be read as references to the public authority which established the scheme.

*Subsection (3)* requires the Department of Finance and Personnel to consent to the establishment of a new public body pension scheme after this clause is commenced, or the subsequent variation of the rules of such a scheme.

*Subsection (4)* sets out the meaning of ‘public body pension scheme’ and ‘new public body pension scheme’.

### **Clause 31: Restriction of certain existing public body pension schemes**

Clause 31 contains provision for the Department of Finance and Personnel to specify public bodies whose pension schemes would be restricted and so that no benefits are provided under the scheme to or in respect of a person in relation to their service in the schemes after a date to be specified.

*Subsection (1)* provides powers for the Department to specify by order named bodies, offices, or descriptions of bodies or offices, to which the clause would apply.

*Subsection (2)* places a duty on the public authority which is responsible for such a scheme to close the scheme for future service after a date determined by the authority.

*Subsection (3)* sets out that subsection (2) does not apply to defined contributions schemes or injury and compensation schemes. The obligation to secure that no further benefits are accrued beyond the date set will only apply to defined benefits schemes.

*Subsection (4)* allows pension schemes which are required to be closed under subsection (2) to continue to provide benefits by way of exception for certain members who are eligible for transitional protection. Where transitional protection is offered, it is expected to be offered on the same basis and timing as transitional protection in the schemes that are closed to future accruals under clause 18. This will mean that the transitional protection is expected to be based upon a starting date of 1st April 2012, rather than any later date, despite the later progress of reform to public body pension schemes. Subsections (7) and (8) of clause 18 will apply to transitional arrangements in the public body schemes closed to future accruals.

*Subsection (5)* allows for the obligation to prevent future accrual of rights in public body defined benefit schemes, and exceptions to that, to be achieved by amending existing public body defined benefit schemes.

*Subsection (6)* explicitly sets out that subsection (2) also applies to death in service benefits.

*Subsection (7)* allows the public authorities responsible for a public body scheme to establish new pension schemes for staff or office-holders where it is not possible for those persons to become members of one of the major schemes established under clause 1. Clause 30 provides details of the types of scheme that may be established in such cases.

*Subsection (8)* prevents a public authority which closes a scheme in accordance with subsection (2) from exercising any existing statutory function or other power so as to establish a new defined benefits scheme. Its purpose is to ensure that replacement schemes will only be made using the power in subsection (7).

*Subsection (9)* provides that where an existing public body scheme was established by trust deed, subsections (2) and (4) supersede any conflicting provision of the deed or of the law relating to trusts.

*Subsection (10)* provides that an order made by the Department of Finance and Personnel under subsection (1) may also make consequential and supplementary provision, including amendments to legislation.

*Subsection (11)* provides that an order made by the Department of Finance and Personnel under subsection (1) is subject to the negative procedure.

*Subsection (12)* allows subsection (1) to be used to close to future accrual schemes made before or after clause 31 comes into force.

*Subsection (13)* indicates that the provisions of Schedule 7, which provides for a “final salary link”, apply for the benefit of members of public body schemes restricted under this clause.

### **Clause 32: Existing public body pension schemes: pension age**

This clause allows an existing public body pension scheme to reform itself by including a provision that the normal pension age and deferred pension age of members of those schemes is to be the same as their state pension age (*subsection (1)(a)*). The link may only apply to benefits accrued under the scheme after the provision to establish that link took effect.

*Subsection (1)(b)* allows any changes to normal or deferred pension age that occur as a result of a change in state pension age to apply to the calculation and payment of all benefits earned in a scheme; including, as set out in *subsection (2)*, benefits accrued after the creation of the link but before the relevant change in state pension age.

The effect of this clause is to allow existing public body pension schemes to include a provision to link normal and deferred pension ages, so they change in line with any change to state pension age. If state pension age increases by one year, the normal and deferred pension ages would automatically increase by one year, and the increase would apply to all benefits earned in the scheme from the point at which the link to state pension age was created.

### ***General***

#### **Clause 33: General Interpretation**

Clause 33 contains definitions.

### **Clause 34: Regulations, orders and directions**

This clause sets out the meaning of “affirmative procedure”. *Subsection (2)* provides that directions given under the Bill by the Department of Finance and Personnel may be varied or revoked.

### ***Final***

### **Clause 35: Financial provision**

This clause provides that any expenditure for the provision of pensions or other sums payable to present or former holders of judicial office are to be paid out of money provided by the Assembly.

### **Clause 36: Commencement**

This clause provides when and how the provisions of the Bill are to come into force. The provisions listed in *subsection (1)* come into force automatically on the day the Bill is enacted. They include the provisions to extend access to the existing Principal Civil Service Pension Scheme (Northern Ireland) in clause 29 and Schedule 9;

By *subsection (2)*, the remaining provisions are to be brought into force on such day or days as appointed by the Department of Finance and Personnel in an order. By *subsection (3)* such an order may appoint different days for different purposes, and may make provisions with transitional, transitory or saving effect.

### **Schedule 1: Persons in public service: definitions**

Schedule 1 contains definitions of the persons in public service listed in clause 1(2) for whom schemes may be made under clause 1.

### **Schedule 2: Responsible authorities**

This Schedule lists the Northern Ireland Ministerial Departments which may exercise the power under clause 1 to make scheme regulations for the main categories of persons in public service set out in that clause.

### **Schedule 3: Scope of scheme regulations: supplementary matters**

This Schedule contains a list of the type of provision that may, in particular, be included in scheme regulations made under clause 1. It is not an exhaustive list, but an indication of what can be included in scheme regulations.

Paragraph 1 allows for scheme regulations to set out details of the persons who are eligible for membership of the scheme and the conditions that apply to eligibility. Scheme regulations

may relate to a narrower class than those who could be covered by the scheme (for example where some of those workers belong to other public service schemes).

Paragraph 2 provides a non-exhaustive list of some of the benefits for employees that may be written into regulations, including: pensions; benefits payable on death (including death in service); and compensation payments for death, injury or redundancy.

Paragraph 3 provides a non-exhaustive list of some of the types of people to whom benefits can be paid under the regulations of the scheme. These include: active, deferred and pensioner members; pension credit members; and their surviving spouses, civil partners and dependants.

Paragraph 4 allows for regulations to set out conditions for making payments to members.

Paragraph 5 allows for regulations to set out the circumstances in which benefits can be assigned to other persons and any restrictions on such assignment.

Paragraph 6 allows for regulations to set out how and when benefits can be forfeited or suspended.

Paragraph 7 allows for regulations to set out how schemes may recover any benefits that have been overpaid.

Paragraph 8 allows for scheme regulations to exclude double recovery of compensation or damages, including by modifying rights to compensation or damages where two sources of compensation or damages would otherwise be available for the same matter.

Paragraph 9 allows for regulations to set out provisions for the making of contributions by employers and employees, including contribution rates. Interest may be charged on the late payment of contributions, whether by employees or employers.

Paragraph 10 allows for regulations to set out how transfers of accrued pension “pots” will work and also any lump sum payments that can be made, in order to enable pension benefits to be transferred into, out of, or between schemes.

Paragraph 11 allows for regulations for schemes which are funded to detail how such funds will be administered and managed, and how funds will be wound up.

Paragraph 12 provides a non-exhaustive list of the provisions that may be included in regulations that relate to the administration and management of the scheme.

Paragraph 13 allows for scheme regulations to provide for the functions of the scheme manager or responsible authority to be delegated, and for further delegation of such functions.

Paragraph 14 allows for scheme regulations to provide for employers to make payments to the scheme manager. This includes contributions to the administrative cost of the scheme and additional payments where a failure by the employer to comply with obligations under the scheme has increased those administrative costs. Interest can also be provided for under this paragraph.

Paragraph 15 allows for regulations to set out the steps to be taken by schemes for resolving disputes and appeals. Schemes may provide for questions of law that have to be decided by the responsible authority to be determined instead by a court of law.

#### **Schedule 4: Regulatory oversight**

Schedule 4 contains amendments to the Pensions (Northern Ireland) Order 2005 (“the 2005 Order”), in relation to the regulatory responsibility of the Pensions Regulator for public service pension schemes.

Paragraph 2 contains definitions.

Paragraph 3 amends Article 9 of the 2005 Order to allow the Pensions Regulator to issue an improvement notice by reference to a code of practice issued under new Article 85A (see below); and to ensure that certain provisions in this Bill fall within the definition of “pensions legislation” so that improvement notices can be issued if they are breached.

Paragraph 4 inserts new Article 10A to allow the Pensions Regulator to appoint an appropriately skilled person to help a pension board carry out its functions. The pension board will be responsible for assisting the scheme manager in the administration and governance of the scheme. If the board is having difficulty in appropriately performing that role, expert help may be necessary. The pension board must have regard to the advice of the appropriately skilled person, and the skilled person’s costs are to be met by the scheme manager.

Paragraph 5 amends Article 13 to provide that the Pensions Regulator may intervene and help to recover unpaid contributions that are owed to a public service pension scheme by an employer under that scheme.

Paragraphs 6, 8 and 9 make consequential amendments to Articles 65, 66 and 68, inserting references to pension board members to reflect the new public service pension scheme pension board structure.

Paragraph 7 inserts a new Article 65A requiring the scheme manager of a public service pension scheme to notify the Pensions Regulator of an employer’s failure to pay pensions contributions on time if that failure is likely to be something that the Pensions Regulator would consider to be materially significant to the Regulator in the exercise of its functions (for example, in considering whether the employer is fulfilling its obligations and being



satisfied that the scheme is being managed properly). Failure to report can lead to a civil penalty.

Paragraph 10 amends article 68 of the 2005 Order to add record keeping to the list of provisions in respect of which the Pensions Regulator may enter premises to investigate compliance.

Paragraph 11 amends Article 84 of the 2005 Order, requiring the Regulator to notify the scheme manager before making a report under that Article in respect of a public service pension scheme. This requirement will mean that the scheme manager is aware that the Regulator intends to issue a report about the scheme and can choose to take remedial action in advance if they wish. The scheme manager cannot prevent the Regulator from issuing a report.

Paragraph 12 inserts new Article 84A requiring the Regulator to report concerns to the scheme manager where the Regulator has reasonable grounds to suspect or believe that a member of the pension board has misappropriated any assets of the scheme, or has a conflict of interest in relation to the investment of assets in the scheme. Under the Order the Pensions Regulator does not have a formal role in relation to funding or investment for the funded schemes. However, in the course of undertaking oversight of administration and governance of the schemes it is possible that the Regulator may be made aware of inappropriate behaviour by a member of the pension board in relation to the scheme assets or investments. As the scheme manager is responsible for setting up and appointing the pension board, it is appropriate that any concerns are directed to the scheme manager to address. Privilege attaches to any such report, unless it is shown that it is maliciously motivated. The Article also makes clear that a conflict of interest in relation to investment of assets does not arise merely from any person being a member of the relevant scheme.

Paragraph 14 inserts new Article 85A, allowing and, in certain cases, requiring the Pensions Regulator to issue codes of practice for public service schemes. A list of matters that codes must cover is set out at new Article 85A(2). The requirement to issue codes of practice is at the core of the Pensions Regulator's new role in relation to public service schemes. To help ensure schemes meet good standards of administration and governance, those involved in administering them need to know what standards they should be aiming to achieve. This Article is similar to Article 85 of the 2005 Order and replicates the provisions of that Article regarding: revision of codes of practice; effect of failing to observe codes of practice; admissibility in evidence; the scope of codes of practice; and the procedures relating to them. The paragraph also contains a power for the Department for Social Development to prescribe other matters which must be covered by codes if in the future it is considered necessary to do so.

Paragraphs 15, 16, 17 and 18 apply to public service pension schemes provisions of the 2005 Order which relate to codes of practice, power to appoint a skilled person and requirements about winding up.

Paragraph 19 amends the 2005 Order by inserting a new Article 225A, which places a requirement on members of the pension board to have knowledge and understanding about the scheme and the law relating to pensions and any other prescribed matters. As the pension board is responsible for assisting the scheme manager in the administration of the scheme, it is appropriate that those individuals carrying out this role should have appropriate knowledge about the scheme they are helping to run. This provision is similar to Article 224 of the 2005 order which places requirements on trustees to have knowledge and understanding about the scheme which they are running and the law relating to pensions more generally.

Paragraph 20 amends Article 226A of the 2005 Order and paragraph 21 inserts a new Article 226B to place a requirement on the scheme manager of a public service pension scheme to have an adequate system of internal controls.

### **Schedule 5: Existing pension schemes**

Schedule 5 contains a list of powers that are used to make schemes, the provision of benefits under which is restricted by clause 18 in relation to service after the closing date set by that clause. The restrictions on existing schemes do not apply to the provision of injury and compensation benefits and these are excepted from the scope of the restriction where relevant.

Paragraphs 1 to 7 list powers to make existing schemes, and any applicable exceptions, in respect of:

- civil servants at paragraph 1;
- the devolved judiciary at paragraphs 2;
- local government workers at paragraph 3;
- teachers at paragraph 4;
- health service workers at paragraph 5;
- fire and rescue workers at paragraph 6;
- members of the police service at paragraph 7;

The meaning of the terms “compensation benefits” and “injury benefits” is set out in clause 33.

## **Schedule 6: Existing injury and compensation schemes**

Schedule 6 lists powers to make existing injury or compensation schemes. Clause 19 permits scheme regulations to close such schemes at a future date, subject to any exceptions provided for by the scheme regulations.

Paragraphs 1 to 7 list the powers under which existing injury and compensation schemes are made. This covers:

- civil servants at paragraph 1;
- local government workers at paragraph 2;
- teachers at paragraph 3;
- health service workers at paragraph 4;
- fire and rescue workers at paragraph 5;
- members of the police service at paragraph 6; and
- compensation schemes for loss of office at paragraph 7.

The meaning of the terms “compensation benefits” and “injury benefits” is set out in clause 33.

## **Schedule 7: Final salary link**

Final salary scheme pension benefits accumulated up until the date that existing schemes close by virtue of either clause 18(1) or clause 31(1) are to be calculated by reference to the member’s final salary at the point they retire or otherwise leave pensionable service in a new scheme (not the point at which their final salary scheme was closed). This final salary link applies to all past service in final salary schemes prior to the closing date.

Paragraph 1 deals with a person who remains in an old scheme for their past service and becomes a member of a new scheme under clause 1 or a new public body pension scheme. If their service in the old scheme and in the new scheme is continuous then, in determining the person’s final salary for the purposes of the old scheme, their service in the old scheme is to be regarded as having ended when their service in the new scheme ends, and their pensionable earnings from their new scheme service are to be regarded as derived from the old scheme service. By sub-paragraph (2), scheme regulations made under this Bill may set out a distinct definition of earnings for the purposes of the final salary link. However, in doing so, the amount of earnings in the new scheme which are to be taken as pensionable earnings for the purposes of the final salary link cannot be materially less than the earnings

that would have been the person's pensionable earnings had service in the new scheme been old scheme service (sub-paragraph (3)).

Paragraph 2 makes the same provision in the case of a person who moves to a different public service pension scheme (such as a move from the Health and Social Care Pension Scheme into the Local Government Pension Scheme (Northern Ireland)) when the old scheme is closed, and whose benefits under their original old scheme are transferred to their new employer's old scheme. By subparagraph (2), scheme regulations made under this Bill may set out a distinct definition of pensionable earnings for the purposes of the final salary link. However, in doing so, the amount of earnings in the new scheme which are to be taken as pensionable earnings for the purposes of the final salary link cannot be materially less than the earnings that would have been the person's pensionable earnings had service in the new scheme been deemed transfer scheme service (sub-paragraph (3)). Sub-paragraph (4) provides that in paragraph 2 a transfer of rights from one old scheme to another includes the making of a transfer payment in respect of such rights.

The different existing schemes determine final salary in different ways. However, taking the Classic section of the Principal Civil Service Pension Scheme (Northern Ireland) ("PCSPS(NI)") as an example, "pensionable earnings" essentially means the highest of the last three years of reckonable service (to determine what someone's final salary is in PCSPS(NI) Classic it is necessary to consider the level of their salary during the last three years of their reckonable service). This is why paragraph 1 provides that in determining the person's final salary for the purposes of the old scheme, the old scheme service is to be regarded as having ended when the new scheme service ends, and such earnings derived from the new scheme (as the scheme regulations may specify) are to be regarded as derived from the old scheme service. Paragraph 2 makes similar provision in respect of determining a person's final salary for the purposes of the transfer scheme.

The service which is treated as pensionable for the purposes of the old scheme may include service transferred into the old scheme (including service in the private sector transferred into the old scheme under the Fair Deal policy). Such service will count as "old scheme service" within the meaning of paragraphs 1 and 2. These paragraphs deliver the final salary link for those who transfer service into the old scheme under the Fair Deal policy.

Paragraph 3 sets out what is meant by continuous service in paragraphs 1 and 2. Any period when the person was in pensionable service in another public service or new public body scheme, and any gap in pensionable service that does not exceed five years in length, is to be disregarded, and in such circumstances service is to be considered continuous.

Paragraph 4 makes it clear that if the person had periods of service with two or more different new schemes under clause 1 or a new public body pension scheme, pensionable service with the last of those schemes is to be taken into account when calculating the member's final salary under paragraphs 1 or 2.

Paragraphs 5 to 9 allow scheme regulations to provide that a pension that is in payment under an existing public service or public body pension scheme cannot be recalculated by reference to Schedule 7 following a subsequent period of public service employment. Subparagraph (2) would allow such provision to be made by amending the relevant existing scheme.

This Schedule sets the minimum level of final salary link that applies to all the schemes closed under clause 18(1) or clause 31(1). However, it is not exhaustive and scheme regulations can (subject to the consent requirements in clause 3) make provision for the final salary link to apply in additional circumstances, as long as this is not inconsistent with what is said in the Schedule.

### **Schedule 8: Consequential and minor amendments**

Schedule 8 contains minor and consequential amendments to primary legislation. Many of the amendments in this Schedule annotate powers to make pension or other benefit schemes, where applicable, to note that they are subject to the restrictions placed on the use of those powers by clauses 18 and 19 (restrictions on benefits provided under existing schemes). They are not commented on further in these notes.

#### **Paragraph 2: Pensions (Increase) Act (Northern Ireland) 1971**

Paragraph 2 amends the Pensions (Increase) Act 1971 to clarify how the uprating provisions in that Act operate on public service pensions that are either protected by the final salary link in Schedule 7 or are career average schemes to which the restrictions in clauses 18(1) or 31(1) apply.

Paragraph 5 adds pensions made under the Act to the list of official pensions in Schedule 2 of the Pensions (Increase) Act (Northern Ireland) 1971. The effect is to provide for the annual uprating of deferred pensions and pensions in payment under the mechanism which that Act provides.

#### **Paragraphs 19 to 21: Pension Schemes (Northern Ireland) Act 1993**

These paragraphs amend the Pension Schemes (Northern Ireland) Act 1993, in respect of schemes made under clause 1, to allow a deferred pension age that is linked to state pension age (see clause 10) to be greater than 65.

### **Schedule 9: Existing schemes for civil servants: extension of access**

Schedule 9 amends the Superannuation (Northern Ireland) Order 1972 to extend access to the schemes under that Order which provide for superannuation benefits for civil servants.

Currently, admission to the Principal Civil Service Pension Scheme (Northern Ireland) (PCSPS(NI)) and other schemes made under Article 1 of the Superannuation (Northern Ireland) Order 1972 is restricted to those in employment in the civil service or those in an employment or office listed in Schedule 1 to that Order. Restrictive criteria apply to adding employments or offices to Schedule 1 to the 1972 Order. Members of the PCSPS(NI) who are

compulsorily transferred out of the civil service to an independent provider of public services are therefore not able to retain membership (instead the current Fair Deal policy applies, requiring the new employer to provide a broadly comparable pension and advantageous bulk transfer terms).

The current Fair Deal policy is due to be amended to allow people under the above circumstances to retain access to their public service pension before the new schemes are introduced. Due to the restrictions on access to the PCSPS(NI), the new Fair Deal policy could not apply without a change to the primary legislation. Schedule 9 aims to make this change to allow access to people who are not currently entitled to access under the 1972 Order. The Schedule will come into force on Royal Assent, to ensure that the new Fair Deal policy can be implemented in relation to the PCSPS(NI) with immediate effect. Any delay may mean that staff who are being moved out of the civil service could miss the opportunity to remain in their current pension arrangements and delay progress of improvements to public service delivery.

New paragraph (3A) of Article 3 of the 1972 Order provides that the Article will also apply to persons serving in an employment or office specified under new Article 3A of the 1972 Order.

Paragraph 3 inserts new Article 3A which gives the Department of Finance and Personnel the power to specify employments and offices for the purposes of the new 3(3A) Article of the 1972 Order.

New Article 3A(1) provides that the Department of Finance and Personnel may specify in a list the employments and offices which will qualify persons for admission to a scheme by virtue of new Article 3(3A). An employment or office may be specified only if sub paragraph (2), (3) or (4) of Article 3A is satisfied.

Sub paragraph (2) applies where staff are transferred to a new employer after these provisions come into force, and so would otherwise cease to be entitled to membership of the PCSPS(NI). If persons serving in that office or employment would have been eligible to be members of the scheme on the point of transfer, the Department of Finance and Personnel can specify the office or employment for the purposes of new Article 3(3A); the staff will then be entitled to retain access to the scheme.

Sub paragraph (3) applies where staff were transferred to a new employer before the provisions come into force and have ceased to be members, or to be entitled to membership, of the PCSPS(NI). If persons serving in that office or employment would have been eligible to be members of the scheme before the transfer then the Department of Finance and Personnel can specify the employment or office for the purposes of Article 3(3A); the staff will then be entitled to regain access to the scheme.

Sub paragraph (4) allows the Department of Finance and Personnel to specify an employment or an office in particular cases where it determines that it is appropriate to do so and the

employment or office comes within a description set out in regulations. The general principle is that access under these provisions is for individuals who were entitled to access to the PCSPS(NI) at the point when they are moved to a new employer. The intention is that subsection (4) will only be used in exceptional cases as circumscribed by the descriptions in the regulations and the determination of the Department of Finance and Personnel.

Sub paragraph (5) will allow access to be granted by virtue of subsection (4) with retrospective effect. This provision will allow the scheme to deal with historic anomalies.

Sub paragraph (6) requires the list of employments and offices which qualify persons for access to the PCSPS(NI) (and any amendments to the list) to be published.

Regulations made by the Department of Finance and Personnel under sub paragraph (7) will set out the information that the published list must contain. It is intended that this will include: details of the employments and offices specified; the name of the employers; the dates from which access through this route is granted; and the circumstances that must exist for access to continue.

Those who gain access to the PCSPS(NI) through this route will move into the new schemes once they are established under the Bill and the closing date as set out in clause 18 has passed (as for other members, except for those who are protected by transitional provisions). In the new schemes, access will be extended where required under the procedure in clause 25.

## **FINANCIAL EFFECTS OF THE BILL**

14. The Bill provides the legislative framework for devolved public service pension schemes to be reformed on line with core provisions and therefore in itself does not have any financial implications.
15. The Department does not consider that the core provisions of the Bill will lead to any increased expenditure in any area where Northern Ireland Department currently make regulations for public service pension schemes.
16. Clause 35 of the Bill makes financial provision for regulations which may be made in future by the Department of Justice under the Bill. This eventuality is predicated on the basis of the Department of Justice assuming the role of 'responsible authority' for schemes for devolved Judicial Offices. Under current arrangements the responsible authority for the pension arrangements made for devolved judicial offices is the Ministry of Justice. Any change to the current approach will require formal agreement by the relevant Ministers for OFMDFM, DOJ, DEL and DSD.
17. HM Treasury confirmed to the Minister of Finance and Personnel on 3 December 2012 that a proportional reduction will be applied to the Northern Ireland block allocation if legislation to reform devolved public service pension arrangements in Northern Ireland is not concluded to the deadlines contained in the Westminster Public Service Pensions

Act 2013. (The deadline for reform for the schemes made for public employments listed at clause 1 of the Bill is 1 April 2015, with the exception of the scheme for the local government workers which has a deadline of 1 April 2014).

18. The Department has undertaken initial analysis on the financial effects of not implementing the core provisions of the Bill in the devolved public service pension schemes to the timescales contained in the Westminster Public Service Pensions Act 2013. The overall projected cost is estimated in excess of £300m per year. Costs for each of the main public service schemes are: Northern Ireland Teachers Pension Scheme - £60m; Police Pension scheme - £60m; Principal Civil Service Pension Scheme (Northern Ireland) - £ 60m; Fire Fighters Pension Scheme- £ 10m; Health and Social Care Pension Scheme- £110m. These figures are based on calculations made the Government Actuary's Department to estimate the recurring annual cost of reduced public service pension liabilities if schemes are not reformed.

## **HUMAN RIGHTS ISSUES**

19. Article 1 of Protocol 1 to the European Convention on Human Rights (ECHR) provides that every natural or legal person is entitled to the peaceful enjoyment of their possessions. Pensionable benefits that have already been earned or accrued (through length of service, payment of contributions, or otherwise) are widely accepted to be 'possessions' within the meaning of Article 1 Protocol 1, although the exact nature of the benefits that have been earned or accrued requires careful examination. It is not anticipated that the Bill will have human rights implications, apart from the following provisions:

Clause 3: *Scheme regulations*. This allows for scheme regulations to contain provisions with retrospective effect. Such retrospective changes, if made, may constitute an interference with property within the meaning of Article 1 Protocol 1 of the ECHR. The Bill incorporates safeguards against the application of a retrospective provision which may constitute such interference. Under clause 23 a responsible authority which proposes to make scheme regulations containing retrospective provision which appears to the authority to have significant adverse effects in relation to the pension payable to or in respect of members of the scheme, must first obtain the consent of employee representatives. Such regulations will also be subject to the affirmative resolution procedure in the Assembly.

Clause 9: *Revaluation*. In the rare case that the general rate of prices and/or earnings falls, revaluation could take place according to a negative percentage, which will have the effect of shrinking the value of the accrued pension of an active member. There is potential for argument that such a revaluation could constitute an interference with property within the meaning of Article 1 Protocol 1 if the potential to accrue a larger pensionable benefit could be considered to be a 'possession', although as the possibility for negative revaluation is an inherent part of the pension benefits as



they are earned this may be hard to sustain. Under the Bill any Order that would implement a revaluation according to a negative percentage will be subject to the affirmative procedure in the Assembly.

Clause 10: *Pension Age*. A change in state pension age would mean that scheme members take their pensions accrued under the new schemes at an earlier or later age. This may constitute an interference with property within the meaning of Article 1 Protocol 1, as pensionable benefits which have been accrued are likely to be property within the meaning of that Article. However, all benefits accrued are subject to the link between normal pension age and state pension age, and so it could be said that there is no expectation to take full pension at a specific age: the expectation is that full pension will be taken at the then prevailing state pension age. In the event that there was any interference, a lowering of state pension age would be beneficial and any adverse interference would only arise if the level of state pension age rose. The exception for members of the police service and firefighters, may also amount to discrimination within the meaning of Article 14 of the ECHR, although the unique characteristics of the work of these groups is not listed as a protected ground in Article 14 and may not come under the heading of “other status”.

Clause 12: *Employer Costs Cap*. This provides for a mechanism that, if in the future scheme costs rise outside margins of a costs cap set by directions made by the Department of Finance and Personnel, scheme regulations will take steps to bring costs back into that level, by adjusting contribution levels or reducing benefits. If this future event occurs, it might potentially be an interference with possessions within the meaning of Article 1 Protocol 1 of the ECHR depending upon the facts as they are at that time. However, it is very unlikely that any interference with possessions will arise in the event that, as intended, no adjustments are made to benefits already accrued.

Clause 18: *Restriction of existing schemes*. This clause which prevents scheme members from accruing any further rights in their existing schemes, does not engage Article 1 Protocol 1 of the ECHR because this Article does not guarantee an open-ended right to acquire further possessions such as benefits in the current pension schemes. Nor is there any discrimination on the grounds of age under Article 14 (as under current transitional plans the younger members of the scheme will be affected more by the changes) as Article 14 cannot apply in isolation. In any case the provision of transitional and tapering protection for older members (who have less time to prepare for the change and are accordingly more vulnerable) itself shows why any potential for interference would be justified and proportionate.

## **EQUALITY IMPACT ASSESSMENT**

20. An equality screening exercise has been conducted and concludes that a full equality impact assessment is not required<sup>3</sup>.
21. Scheme specific subordinate legislation made under the Bill will be subject to individual equality impact assessment screening.

## **SUMMARY OF THE REGULATORY IMPACT ASSESSMENT**

22. The Bill will not impact on business, the voluntary sector or the environment. It has not therefore been subject to a regulatory impact assessment.

## **LEGISLATIVE COMPETENCE**

23. The Minister of Finance and Personnel had made the following statement under section 9 of the Northern Ireland Act 1998:

*“In my view the Public Service Pensions Bill would be within the legislative competence of the Northern Ireland Assembly.”*

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<sup>3</sup>The Department of Finance and Personnel equality Screening document is available at: [www.dfpni.gov.uk/policy-screening-public-service-pensions-bill](http://www.dfpni.gov.uk/policy-screening-public-service-pensions-bill)