Northern Ireland Assembly

Committee for Finance and Personnel

OFFICIAL REPORT (Hansard)

Superannuation Bill: DFP Briefing

4 July 2012

NORTHERN IRELAND ASSEMBLY

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Members present for all or part of the proceedings:
Mr Daithí McKay (Chairperson)
Mr Dominic Bradley (Deputy Chairperson)
Mr Roy Beggs
Mr Paul Girvan
Mr William Humphrey
Mr Mitchel McLaughlin
Mr Adrian McQuillan

Witnesses:

Ms Margaret Coyle	Department of Finance and Personnel
Ms Margaret Miskelly	Department of Finance and Personnel
Mrs Grace Nesbitt	Department of Finance and Personnel

The Chairperson: I welcome the following witnesses from the Department of Finance and Personnel (DFP) to the Committee: Grace Nesbitt, the head of Civil Service pensions; Margaret Miskelly, the head of policy in Civil Service pensions; and Margaret Coyle from policy in Civil Service pensions. We have provided you with a summary of the key issues that arose from the evidence given to the Committee. Perhaps you can outline the provisions in each clause, with particular reference to the Department's response to each of the issues set out in the table. I think that that is the best way in which to approach it.

Mrs Grace Nesbitt (Department of Finance and Personnel): I will endeavour to do that as best I can. However, I point out that I only received the paper this morning. I will attempt to do what you ask, and while preparing my introductory remarks for the Committee, I anticipated having to do so. I have tried to do that to the best of my ability, and, from having a quick read of the paper when I was sitting in the back row of the Public Gallery, I think that I have covered most of the issues. However, hand on heart, I cannot say that I have covered all of them. I am therefore happy to follow up in writing to the Committee.

I will make some opening remarks. I welcome the opportunity to meet the Committee again to discuss the Superannuation Bill. I previously briefed the Committee on the Bill on 7 March, prior to its formal introduction in the Assembly on 12 March. The Department has responded in writing to a number of the issues that were raised by the Committee on 7 March. Those matters included the analysis of the pros and cons of breaking parity with the Home Civil Service; comparative examples of the estimated compensation benefits under the current scheme compared with the new scheme; and the Department's view on whether provision could be added to the Superannuation Bill to amend the Superannuation (Northern Ireland) Order 1972 to require scheme amendments to be subject to Assembly procedure.

The Department also responded formally to the Committee's request of 25 May for views on the equality impact and human rights considerations associated with the Bill. A written response was also provided on the issues raised in the paper by the Assembly's Research and Information Service (RaISe) on the provisions for consultation. The written responses set out the Department's position on the issues raised to date.

If the Committee permits, I think it would be helpful if I were to address some of the main points. I also intend to —

The Chairperson: Grace, it might be better if we went through it issue by issue. Members have the table in front of them. That will allow us to deal with this as expeditiously as possible.

Mrs G Nesbitt: OK. I am not sure how prepared I am for that. I will respond to the issue of the consultation. The Department considers that replacing the trade union veto on detrimental changes to the Civil Service compensation scheme with a new requirement to consult — with the aim of reaching agreement — to be necessary and appropriate. It will advance best practice and effective consultation. There was a bit of talk in the earlier session about what "consultation" means. It is defined in the Information and Consultation of Employees Regulations (Northern Ireland) 2005, as an "exchange of views" with a two-way process of dialogue and discussion. Those regulations are also known as the information and consultation of employees (ICE) regulations, which is perhaps an inappropriate abbreviation. That definition is also referenced in the paper from the Assembly's Research and Information Service. The Department contends that the retention of the veto would be contrary to the meaning of "consultation" in that definition.

The Department accepts that the reform of compensation is a difficult issue for civil servants, and that the proposed reform of pensions is contentious. There is always a duty to consult, and that is referenced in the pensions legislation.

The Department has established a pensions forum between Civil Service management side and trade union side. Its purpose is to allow engagement on all the prospective changes to the Civil Service pension compensation arrangements. The forum has established a constructive two-way engagement with the trade union side. I do not know whether I am a shadow boxer providing clarification, but I will provide some clarification on the dates. The forum has met a number of times. The terms of reference were agreed and signed off formally on 21 June. If the Committee wishes, I can provide a copy of the terms of reference. The forum has been established as a primary method of conversation between management and trade union sides, with the aim of reaching agreement on changes to pension and compensation scheme arrangements.

The Research and Information Service paper questioned whether the Bill should specify that consultation should take place at a time when proposals in GB are at a formative stage. Again, this was touched on earlier. The Civil Service unions were represented on the Council of Civil Service Unions and was involved directly in the central "negotiations" with HM Treasury and the Cabinet Office on the Home Civil Service compensation arrangements, which were actually brought in — and this is where I know it gets a little bit confusing — under the previous Labour Government. The unions here were represented on the council. Although the Council of Civil Service Unions has since been dissolved, a new grouping has been set up, a national trade union committee. On that committee are the seven nationally recognised trade unions that represent the Civil Service, including the PCS, the Prison Officers Association, Prospect, the FDA, NIPSA, Unite and the GMB. That would be a way for the unions here to have input into any proposed changes happening in GB at a formative stage in the arrangements.

The Bill proposes an equivalent amendment to those introduced in GB on reporting duties. The fact that the Department must report to the Assembly on the consultation that has been undertaken is an additional measure to the appropriate steps that have to be taken to secure agreement.

As regards consultation in the context of parity, the paper asks whether consultation under the Bill may be taken into account by DFP and whether consultation could influence the outcome. The Department has been clear in its stated position, which is to maintain parity with Great Britain on the reform of compensation arrangements. The response to any comments or questions arising from the consultation exercise will therefore need to take account of that position. Again, there is a statutory requirement under the Superannuation (Northern Ireland) Order 1972 for the Department to consult the unions on all proposed amendments.

The human rights issue relates to clauses 1 and 2, which deal with the removal of the veto and the need to consult with a view to reaching agreement. I have done a little bit more work on some important points, and I think that it is important to bring those to the Committee's attention. The Human Rights Commission, in its submission to the Committee, raised a number of points on the effect that the Bill might have on human rights, and the Department would like to add to that. The commission stated that the proposal to remove the trade union veto and detrimental changes to the compensation scheme "risks regression" in the protection of a number of human rights, including the right to form and join trade unions for the promotion and protection of economic and social interests and the right to collective bargaining. The exact rights are set out in the paper that has been given to the Committee. We have consulted the Departmental Solicitor's Office, and we do not agree with the contention put forward by the Human Rights Commission. The Bill makes no attempt to interfere with the right to form a union. Rather than impeding union activity and collective bargaining, the Bill actually imposes a new duty on the Department to engage with the union with a view to reaching agreement.

In the case taken — and I have actually re-read the case — by the Public and Commercial Services Union against the Minister for the Civil Service in Great Britain, which is also the case referred to by the Northern Ireland Human Rights Commission in its evidence session on 9 May, the judge dismissed the union's claim that the provisions in the Superannuation Act 2010 introduced in Great Britain amounted to a violation of article 11 of the European Convention on Human Rights. If the Committee is interested, I can supply it with a copy of the judgment; it is quite an interesting read. Members may be aware or may wish to note that article 11 provides for the right to freedom of peaceful assembly and the freedom of association, including the right to form and join unions. Although the decision of the High Court in London may not be binding in Northern Ireland, the legal view is that it would be almost certainly be followed by the courts in this jurisdiction as it is so persuasive that it would be foolish not to apply it.

A related issue raised by the Northern Ireland Human Rights Commission in its evidence to the Committee, and on which the Committee requested a response, concerns the implication and variances between the socio-economic position in Whitehall and that in Northern Ireland, in demonstrating the proportionate balance between a socio-economic interest here and the legitimate human rights consideration. This, again, relates to the legal case that was taken by the Public and Commercial Services Union in Great Britain.

The union involved claimed that the rights to redundancy pay in the compensation scheme for the Home Civil Service amounted to "possessions" and that changes made to the scheme constituted an interference with those possessions under protocol 1 of the European Convention on Human Rights.

In delivering its ruling, the High Court's primary concern was not whether interference to protected rights had occurred, but whether an interference with rights to possessions could be proportionately justified, and whether a fair balance had been struck between persons affected and the community as a whole. The High Court ruled that the coalition had acted proportionately in reforming them, and that it had done so in pursuit of a legitimate aim; that aim being to reduce the national deficit. That legitimate aim was accepted by all parties, including the unions. I think that the key point that has been missed in some of the discussions on this issue to date is the justification argument. The argument included a reference to a previous legal case, in 2001, and it included the fact:

"the allocation of public resources is a matter for ministers, not courts."

Another key issue was that the change, the impact on the individuals concerned — about which the Committee heard evidence from trade union colleagues — was, in the judgement's terms, not "a disproportionate or excessive burden". Rather, the arrangements were "reasonable and commensurate". That was also noted in the finding last year.

The Human Rights Commission also made the point that the socio-economic conditions in Northern Ireland could result in a different outcome, if a test of proportionality was required. Our view is that the socio-economic situation facing people in Northern Ireland and the necessity to create savings to the public purse is exactly the same as that which applies elsewhere.

The financial reality is that the coalition Government are committed to the policy that public service superannuation costs should be controlled across the United Kingdom as part of their overall strategy. You already have evidence of, and there has been discussion about, the financial consequences of not introducing a change. I am not going to repeat that again. HMRC may not be a particularly popular organisation, but its Northern Ireland staff are members of the Home Civil Service and already

enjoy, or experience, different terms than those in other parts of the Home Civil Service. So, we already have people working in the Home Civil Service in Northern Ireland who experience different terms. The big question is whether we want to have different arrangements continuing to apply to people working in the Northern Ireland Civil Service. Are we prepared to fund that if and when the need should arise?

Overall, the Department's view, having read the judgment, is that if we had a similar legal challenge here, the legitimate aim would remain the same, and the justification arguments in support of those legal aims would be equally relevant and could be successfully argued in the event of a challenge. I thought that it would be helpful to bring that to the Committee's attention. Again, this would be a matter that would arise if the union or party decided to mount a challenge.

The Equality Commission's responses do not relate to any specific clauses in the Bill; they are really about the planned changes to the compensation scheme. I thought it would be helpful to clarify matters. The commission raised two issues about the Department's proposal. The first relates to the Department's duties under section 75 and its commitments under the equality scheme. The commission stated that the Department should consider the equality implications of change in the current arrangements under the Northern Ireland compensation scheme when bringing forward proposals for a revised compensation scheme. The Committee has also requested a departmental response on what consideration it has given to carrying out consultation and a full equality impact assessment on its proposal.

The Department has considered those, and I can confirm that, to date, it has fulfilled its equality commitments. The Committee will wish to note that the Department has conducted an equality screening exercise for the Superannuation Bill and will carry out an equality screening exercise on proposals for reform of the Civil Service compensation scheme. The outcome of the equality screening exercise for the compensation scheme will determine whether a full equality impact assessment is required. That is the normal process. The equality impact assessment was not required for the Superannuation Bill because it was screened out. The Department will also publish any draft amendments or impact assessments in relation to the proposed reforms of the compensation scheme when the Superannuation Bill has completed its passage through the Assembly and the content of the Bill is finalised.

The second issue raised in the Equality Commission's submission relates to scheme compliance with anti-discrimination legislation. The Committee also requested information on the consideration that the Department has given to ensuring that its proposals comply with the Employment Equality (Age) Regulations (Northern Ireland) 2006. We have done a little bit more work on that. The key principle in the proposals for the reform of the Civil Service compensation arrangements since the Labour Government published their initial consultation document was to ensure that the redundancy terms were not age-discriminatory. I have rehearsed that issue to the Committee before, and members will be familiar with it. The proposed changes will remove what could be perceived as a vulnerability. The Department's opinion is that the proposed changes will ensure that the new arrangements comply with the Employment Equality (Age) Regulations.

It might be helpful for members to note that a number of claims have been launched against the new compensation scheme in GB. To date, they have all been unsuccessful. Four claimants, who were all over the age of 60, alleged that the terms of the new compensation scheme relating to voluntary exit are discriminatory on the grounds of age on the basis that employees who are 60 or over have their compensation capped at six months' pay whereas compensation for employees who are under 60 is capped at 21 months. The cases were all dealt with at a preliminary hearing on 23 February 2012, and the unanimous judgement was that the claimants were in materially different circumstances to their comparators. As a result, the employment tribunal rejected all the claims. I understand that three of the individuals are pursuing the matter to an employment appeals tribunal, but that is as far as they have got. It is important to note that, given the magnitude of redundancies in the Home Civil Service, this is quite a small number of claims. It is a very specific grouping in the, unfortunate, vast majority of people who have been made redundant in the Home Civil Service. I will come to that later. There has not actually been a significant number of changes.

I am conscious of time. The submission from the Chartered Institute of Personnel and Development (CIPD) does not relate to any specific clauses in the Bill, so, in the interests of time, I do not propose to comment on it. It might be helpful to note a few high-level responses, because there is an issue about how well we compare with other schemes. Other schemes in the public sector have made changes to their compensation arrangements in Northern Ireland. This is where it gets really tricky

and complex, so I will stick to very high-level examples; they are not to be quoted as pension examples for anybody.

Broadly speaking, under current voluntary arrangements, the terms would be 36 months' pay. That is at a very high level; there are so many variances to that, but keep that figure in mind. That is what you would get in the Civil Service under our current scheme. The proposal is to reduce this to 21 months, with a lot of variances in between. For teachers, it is 15 months; for health, it is 24 months; and, for local government, it is 24 months. Teachers and health changed their terms in 2010 and removed age as a reference point. Local government changed the terms of its scheme in 2007. I am not familiar with the detail of those schemes before they made the changes. I am aware — and this was referred to earlier — that teachers had a particular arrangements for a year. They enhanced their arrangement; I think that they brought it up to 30 months. A special arrangement was introduced for teachers here. It shows where civil servants in Northern Ireland currently sit as opposed to those in other broad parts of the public sector.

You also asked whether the trade unions' veto on the compensation scheme applies to other parts of the public sector. I confirm that it does not. There is a duty in the legislation for other sectors to consult with the relevant trade unions, but the veto, to abbreviate it to that term, does not apply to any other part of the public sector in Northern Ireland. I cannot comment in respect of any other part of the United Kingdom, but I suspect that it does not apply to any other part of the public sector in the United Kingdom.

The union's evidence related to clauses 1 and 2, which is the substantive part of the Bill, covering the removal of the veto and the new consultation arrangements. In a sense, that is the essence of the Bill. In the trade union's evidence session in March, the representatives commented that they had not had any negotiation and that they had only had information provision sessions on what the Minister was thinking, where court cases were at and so on. That is one of the reasons why we have moved to establish the forum and to reconstitute it as a formal body.

I noticed that reaching agreement on the new compensation arrangements with the union was raised in the oral evidence of the Human Rights Commission. The commission cited the Republic of Korea as an example of good practice in collective bargaining arrangements.

Mr Beggs: Is that North Korea?

Mrs G Nesbitt: Someone else made that comment to me, so I re-read the submission. The Human Rights Commission did not say whether it was North Korea or South Korea. The Commission described it as the Republic of Korea, so I am quoting what it said because I did not want to get it the wrong way round. It quoted the Republic of Korea, and who I am to disagree with the Human Rights Commission?

There are some other points that I thought it might be helpful to pick up on. The pension legislation, the Superannuation Order and the Superannuation Act in GB always use the term "to consult". We have researched this matter, and the term "negotiate" is not used. In my experience, for consultation to be meaningful, it has to be timely and relevant. We have shared our intention with trade union side right from the start of the pension forum when it first met last year. We gave trade union side the detail of the Superannuation Bill and told it our intention as regards the compensation scheme. We have shared with trade union side the Executive decision made in February this year about the Superannuation Bill and gave it the detail of the clauses. A key part of consultation is being transparent and providing information in a timely way, and that has happened.

The recent meetings of the pension forum were on 15 May and 19 June. Trade unions have offered to engage and negotiate on this matter, and they have made their position clear to this Committee. They have made it clear that they wish to adopt a position of parity plus, and they also want an approach that no detriment should be taken on this issue. The Department's remit is to apply the terms of the Home Civil Service to civil servants who are working in Northern Ireland, essentially as a point of principle but also on the grounds of cost. As an official from management side working with the unions, it is very apparent to me that based on the stance of the unions and the stance of management side the likelihood of agreement being reached on this matter is extremely unlikely. I remind members that union officials have been through the process already when these changes were introduced by the Labour Government a few years ago. They know the detail of it, and it is important to note that.

If you change the language to use the term "negotiate", it is a term used more commonly in dealing with pay, and I have dealt with pay. Even when we have negotiated on pay in the Civil Service, and I am not getting into the regional pay issue again, management have still had to impose a pay deal on staff on occasions. So, negotiation does not always mean that you ultimately reach agreement. At the end of the day, you can describe it as a veto, but somebody somewhere has to make a decision. What this legislation is doing is removing that decision, or veto, however you like to describe it, from the union.

I am conscious of time. I want to remind you that the Department's purpose in bringing this Bill forward is to replicate the changes made to the compensation arrangements for civil servants in Great Britain and to maintain similar provisions to pension and compensation arrangements in the Northern Ireland Civil Service with that of the Home Civil Service. Whether we are facing redundancies at the minute for those people who are members of their scheme, whether members of the Civil Service or various NDPBs, is almost an irrelevance, because I do not know what the future will hold, and I think that is a key issue of which the Committee needs to be aware.

The line we are taking is that we wish to have similar arrangements to those in the Home Civil Service and to be prepared. If we do not change, as I pointed out to the Committee before, there will be two costs. One will be the cost of having different systems and arrangements in place, and I will not rehearse that again as you have it in my written evidence, and the second will be the cost of paying extra to civil servants in Northern Ireland. Those are the key costs with which we will have to deal.

The Chairperson: I am conscious of the time and of the fact that we are having difficulty in keeping a quorum. I know that some members want to make comment. I am going to ask the Committee Clerk to go through the different sections, because we need to agree on a rough way forward for a draft report. Perhaps members would like to intervene at particular points.

The Committee Clerk: When the Committee has its first meeting after recess, it will go straight into clause-by-clause consideration, so it is important that the Committee staff get a sense of the Committee's position, even in outline. We do not have to agree a hard and fast position today, so long as we can get a sense of what members are thinking about the various issues, particularly while the DFP officials are still here. I will go through the issues in the third column on the right-hand side of the table that is in members' packs.

The first two issues have probably been addressed. The third was raised by members in previous sessions about the lack of Assembly control over the scheme amendments under the 1972 Order. There seems to be a disparity of approach between the civil servants in the order and other public servants, local government workers, teachers and health service staff. So, the question is whether the Committee wishes to pursue a potential amendment to the Bill. The Department has confirmed that it would be possible to provide for Assembly control over the amendments. There are different forms of Assembly control, as members are aware, but the regulations in the other parts of the 1972 Order are made by the negative resolution procedure, which would mean that the Committee would have an opportunity to consider reforms made under the subordinate legislation and, if it had objections to any issues, it would have the opportunity to put down a prayer of annulment. It is really just to check with members whether that is something to pursue, and, if so, whether the Committee wants to ask the Department to consider preparing an amendment.

The Chairperson: Do Members have any views on this?

Mr Mitchel McLaughlin: I propose we do that. It is going to be very difficult to get acceptance across the board on this, but I think that it would be of some assistance if the Assembly had an opportunity to scrutinise and approve proposed changes. I support putting that to the Department. I welcome the fact that it has indicated that an amendment can be made to the order.

Mr D Bradley: I second that.

Mr Girvan: I would like some clarification in that regard. Is this coming in on the line of what you mentioned earlier, Mitchel, about how the teacher aspect had worked in on negotiation of that?

Mr Mitchel McLaughlin: No, I was not making any direct reference. I was using it as an example of how, when the Assembly is able to engage on issues, it can sometimes find middle paths. We are in a very unfortunate situation, which is almost like a confrontation, and I think that referring things back to the Assembly is one way of balancing the arguments, as opposed to just putting a Minister in the

invidious position of making a decision on them directly. In the interests of the democratic structures, it makes sense to bring it back to the Assembly, have the argument here, and have the decision made on the Floor. Members can nail their colours to the mast.

Mr D Bradley: I second that proposal.

The Committee Clerk: It would be useful to hear the Department's view on whether it would be willing to bring forward an amendment, because if the Committee wishes to do so and the Department is not willing, we will have to draft an amendment during the summer recess.

Mrs G Nesbitt: The Department would not be willing to bring forward an amendment, because our view is that the current arrangements are satisfactory. I have more to say about why the Civil Service is treated differently, if time permits. If not, I can supply the information to you in writing. We have done some research on why the 1972 Act was constituted as it was. It was set up that way following a joint committee that was formed as a subcommittee of the National Whitely Council back in 1968. Those arrangements were put in place with the agreement of the unions, and it was referred to earlier in the unions' submission that those arrangements have been in place for some time.

In 1972, the arrangements were removed from primary legislation and were promulgated by the administrative acts of the relevant Minister. A number of safeguards were put in place at that time. We contend that one of those safeguards was about genuine consultation with staff interests, meaning the Whitely arrangements. I argue that the requirement to consult under the new changes that we are introducing have been strengthened, because there is now a duty to lay a report in the Assembly and to expose, for want of a better word, what steps have been taken by officials to secure agreement, albeit I accept the union veto is removed. That does not happen in any other engagement that officials have with the union. Think about pay, for instance. It does not happen on pay, which is a very significant issue that happens regularly.

As a departmental official, I contend that the ethos behind the 1972 Act is still intact; in fact; one of the key tenets is actually being strengthened, because consultation with the union is being more exposed to Members by the fact that a report is going to be laid in the Assembly. It could be subject to whatever scrutiny Members wish to give it, and that is something that, I know, officials will not take lightly. Therefore, the Department would not be willing to propose such an amendment.

The Chairperson: Mitchel, would you like to come back on that?

Mr Mitchel McLaughlin: I propose that the Committee prepares its own amendment.

The Committee Clerk: An amendment can be drafted, and the Committee can consider it after recess. It does not need to agree to an amendment today; it can consider a draft amendment after recess and after consideration of the evidence today.

Mr Beggs: Can we have some clarification on what the amendment would do?

The Committee Clerk: It would make any changes to the compensation scheme that are made under subordinate legislation subject to negative resolution procedure in the Assembly. At the moment, those changes can be made and laid, and the Assembly has no control over them. It differs from the position regarding other public sector workers, where any amendments to the scheme are made by regulations, which are subject to negative resolution.

Mr Girvan: If an amendment were made, would we not be breaking parity?

Mr Beggs: There would obviously be cost implications.

Mrs G Nesbitt: The answers is yes. In the arrangements that we have in place in our legislative process, it is not just the substantive content of the terms that apply to civil servants in Northern Ireland. The legislative arrangements mirror those that apply to the whole Civil Service. Therefore, it would be breaking parity. I hope that that is helpful.

The Committee Clerk: As I said, the Committee can consider a draft amendment at a later stage, after hearing evidence.

Mr Mitchel McLaughlin: Deciding that we want the Assembly to have a look at it is not breaking parity. Rather, that would depend on the Assembly's decision. The Assembly would consider whether parity is —

Mr Girvan: If the Committee put forward an amendment —

Mr Mitchel McLaughlin: Putting forward an amendment is not breaking parity.

Mr Girvan: No, but, depending on the way in which the vote goes, it could break parity.

Mr Mitchel McLaughlin: That may decide the attitude of parties, but we should not deny ourselves the opportunity to examine what a Minister intends to do.

The Committee Clerk: The other point that the Committee may need to consider is that, although it may be breaking parity in the legislative approach, that does not necessarily mean that it would be breaking parity when it comes to the reforms to the compensation scheme. It would simply give the Assembly control to examine those reforms before they come into force.

Mr D Bradley: The laying of a report before the Assembly is essentially a fait accompli, because the Assembly has no opportunity to oppose, debate or assess it in any other way. Therefore, although Mrs Nesbitt is flagging it as being majorly different from other areas, such as pay negotiations, it in fact does not offer Members any means of assessing what is in the report.

Mrs G Nesbitt: It provides a level of scrutiny. The analogy that I was drawing with pay is that the level of detailed meetings, and so on, that would be held with the unions on pay are not subject to such scrutiny, yet pay is an important issue. Therefore, I was saying that this is an added measure that will be available for public scrutiny of whatever level Members wish to apply. That is something different and something additional that I have not experienced or dealt with before. It will certainly be a learning experience for colleagues on the management and trade union sides.

Mr D Bradley: Essentially, it is a recipe for you to present us with a fait accompli.

The Chairperson: There are other clauses to get through. We do not have to make a decision on this today. The Committee Clerk can draft an amendment, and we can make a final decision on it in September.

Mr Mitchel McLaughlin: We might need a research paper. We have got one on the difference between consultation and negotiation. What about one on the difference between consultation and scrutiny? Your suggestion is right: let us prepare the amendment and take a look at it again.

Mr Girvan: At Committee Stage.

Mr Mitchel McLaughlin: Of course.

The Committee Clerk: The other issue is whether members are content with the wording in clause 2(2):

"duty to consult with a view to reaching agreement".

Are members content with that, or do you wish to consider amending the term to "negotiate"?

Mr D Bradley: I would prefer "negotiate" to "consult".

The Committee Clerk: Again, members may wish to consider draft amendments.

Mr Girvan: I am still somewhat confused about what was actually said. My understanding is that the consultation has already taken place at a senior level in GB. The unions that were sitting here this morning would have had representation at those consultations. That was the time when any movement could be made, and at a very early stage. I appreciate that we are coming to this very late

in the day. When you insert the word "negotiate", you are giving an indication that you are willing to move position on cost, and that is something on which we have not even had any work done to identify the potential impact. Until you have the entire picture, I have a difficulty with changing that word.

Mrs G Nesbitt: It might be helpful if I comment.

In the detailed meetings and engagement that went on with the unions in GB, a number of options were looked at. Those are set out in the legal judgement, which found against the unions and for the Government. Some of that detail is contained therein. The options that were looked at included having a protected period and at a phasing-in period. I will not bore colleagues with the detail.

The other thing that I draw to members' attention is the bottom-line figure in the National Audit Office report, which I provided a reference to in an earlier submission, about the savings that were made as a result of the scheme being introduced in GB. It estimated that the cost savings were around 45% to 50% on average.

Therefore, the member is absolutely right. Detailed negotiations and consultations were held between management side and the unions in GB, at which the unions present here would have had a say and an input. That consultation went through all the different permutations and came up with a formula that most of the unions agreed to. Four out of five of the main unions agreed to it; one union did not agree. I think that that was the best that could be done within the cost envelope that was available. I do not say that it was the right solution, but it was the best that could be done in the climate that we face. The savings have proved to have been delivered, and they were verified in the National Audit Office's report.

I am not sure that, by looking at things differently in Northern Ireland, we could necessarily come up with something that would be significantly different or better. If we did, we would have the cost of introducing different systems to administer it. That, I think, is the issue that we have. The direction that the Executive have taken on wider public sector pension reform to date has been to follow arrangements similar to those in GB.

I add that the scheme is not part of the wider pension reform. I do not seek to confuse members, but it is something that was introduced by the previous Labour Administration. We delayed doing it because we wanted to wait until the various legal challenges were settled so that we knew what the final position would be in GB before we introduced it here. Therefore, we are already significantly behind because it was introduced in GB in December 2010. I trust that that is helpful.

Mr Mitchel McLaughlin: If the Committee were to argue for a negotiation, what would be the implications for the pensions forum? Does its role become nugatory in those circumstances? Is the forum what the name implies? Is it just a talking shop? Or is it an opportunity to work out agreements that would be binding on both parties? If not, I support negotiation, as opposed to a forum.

Mr D Bradley: I wonder how you can consult to reach agreement if you cannot negotiate.

Mrs G Nesbitt: The terms of reference for the pensions forum, which have been agreed with the trade union side, are:

"to consult with a view to reaching agreement"

I do not think that it is reasonable —

Mr D Bradley: Without negotiation.

Mr Girvan: Agreed negotiation.

Mrs G Nesbitt: I would add that, even with negotiation, we do not always reach agreement. We negotiate on pay and, as I said earlier, do not always reach agreement on it. We have in the past had to impose pay deals on staff in the Civil Service, to which the unions have objected. Therefore, even when you negotiate — there is a slight misunderstanding here — "negotiation" does not mean that you always reach agreement.

Mr D Bradley: Why not put the word in then?

Mrs G Nesbitt: Because the language that is used in our pensions legislation is "consultation". "Negotiation" is a very specific term, and, in the context of employment law and in my experience, it is used solely to deal with pay. It is used to deal not with pension issues but with pay issues. I am just explaining to members that, even with pay, where we do "negotiate" — as I said, that is the language that we use with pay — there have been occasions on which agreement is not reached with the unions, and pay deals have been imposed. I want people to be absolutely clear that, even if we use "negotiation", it does not necessarily mean that we will reach agreement, unfortunately, because that just does not happen.

Mr D Bradley: Is it just a load of semantics, then?

Mrs Nesbitt: I disagree with and take exception to that. My colleagues on management side and my colleagues on trade union side spend a lot of time and effort, whatever the issue, to try genuinely to ensure a meeting of minds. We do that in a very honest and open way and invest a lot of time, commitment and effort into doing that to ensure the best deal that we can. However, we may not always agree, and that is accepted and understood by both sides at the table.

Mr Girvan: My understanding is that, even though it is termed as "consultation", a number of options were put forward, and both sides were probably involved in bringing forward those options. That, effectively, is a form of negotiating, but it is classed as "consultation" in legislation, and that is the way in which it was done. Am I clear on that?

Mrs G Nesbitt: Yes, you are absolutely right.

Mr Mitchel McLaughlin: My concern goes back to the reluctance of the Department to accept the role for the Assembly. If we allied that approach to consultation at the forum, my concerns are reinforced. It strengthens the argument for the Committee to produce its own amendment. That, at least, sets a different context in which the forum can discuss any proposals that are brought forward and work towards finding agreement on them. Subject to successfully amending the order as it is present so that the Assembly has its say, I would move on from this particular issue, because it is subordinate to the first one.

The Chairperson: Members, can we try to get some agreement on this? Are members agreeable for us to come forward with an amendment and then make a decision on it in September when there is fuller attendance at the Committee?

Mr Girvan: I believe that, irrespective of what is being said here today, if this is going forward to the Chamber for discussion, all those aspects will be part of that. I do not think that we are going to get a consensus sitting round this table this afternoon. My view is that, if that is the way in which it is going to be done, that is what will happen. If the Committee wants to put forward a draft amendment for discussion, whether or not it is passed in Committee, that does not take away from the discussions that will take place in the Chamber. Is that correct?

Mr Mitchel McLaughlin: That would be my approach as well. Let us see whether we can work out an agreed approach here in Committee.

The Committee Clerk: Does the Committee wish for a draft amendment to be prepared on that point, or is it content to —

Mr D Bradley: I propose that we prepare a draft amendment on "negotiation".

Mr McQuillan: I think that if we are going to go into as fine detail as we are at the moment, we are not going to get agreement. I think —

Mr D Bradley: We are not going into the detail.

Mr McQuillan: We are. We are proposing changing the wording, and that is detail.

Mr Girvan: I have not discussed this with Adrian, but if an amendment were to come before the Committee, and it includes that wording, we can vote on it as a Committee and make a decision. However, we are not in any position to do that today.

The Chairperson: We are not —

Mr Girvan: If it were up to me, I would keep the word "consult", as presented. That is the way that it would be.

Mr Mitchel McLaughlin: There would be a circular argument today, and I do not have the time for circular arguments. I am already late for another appointment.

The Committee Clerk: We need to know whether to do —

Mr Mitchel McLaughlin: If it is of any help, I think that you need to have the wording prepared as a backup in case the Committee needs to progress through the various sections of the report.

Mr Beggs: We have had an oral comment from the Department today. I want a detailed written comment from the Department as well, should we consider changing the wording. I would be nervous about changing it. In any situation in which groups are negotiating, if a third party comes in and starts doing other things, that can build expectations and alter the balance, shall we say. Therefore, I am nervous that the Committee, as a body, might get in the middle of trade union negotiations.

Mr Girvan: I appreciate that reference was made to a number of court cases, and we held back on bringing this forward to wait on the outcome of those legal challenges. In the light of the bearing of the legal challenge, it might be worthwhile getting some record of what was put forward at those court cases. It could have implications for the Assembly, should we make a decision. It would be helpful for the Committee to have that evidence in front of it before making any rash decisions.

Mrs G Nesbitt: As I said in my opening remarks, I could have given more detail but I got the Committee's paper just this morning. I will prepare a detailed written response to the comments made and set it out in a way that will hopefully be easy for members to follow. I can supply you with more information on the legal challenge. As I said, if it were taken here, the same argument could be applied.

The Committee Clerk: If DFP provides that written response, it will address the other issues that members had and any clarification or assurance that members might require. As to any amendments that need to be drafted for discussion after recess, the only other points arose from the research. One point is whether members wish to see included a minimum time period for consultation. The other point is whether the requirement for the Department to lay before the Assembly a report on the consultation could or should be strengthened. For example, it could require the details of any changes made to the provisions as a result of the consultation. Is there a sense among members that they want to see a draft for discussion of amendments in those areas?

Mr Mitchel McLaughlin: Yes, to both.

The Chairperson: The Office of the First Minister and deputy First Minister (OFMDFM) guidance on a reasonable time frame for consultation is a minimum of eight weeks and a standard of 12 weeks.

Mrs G Nesbitt: We follow those time frames for consultation.

The Committee Clerk: Does the Committee wish for amendments to be drafted, or is it content to take the assurance from the Department on that issue?

Mr Mitchel McLaughlin: If it follows the time frames, there should be no resistance to codifying them. Let us put them in there.

The Committee Clerk: There are two final points to make. If members are satisfied with DFP assurances and responses to the equality impact —

Mr McQuillan: Can I ask why, if you do follow those guidelines, they are not included?

Mrs G Nesbitt: It is just standard practice.

Mr McQuillan: It is just taken as read?

Mrs G Nesbitt: Yes. It is done.

Mr Beggs: I know that, on occasion in the past, from looking at amendments to other legislation, if it is already covered somewhere else, officials do not tend to want it included a second time in another piece of legislation. Can we have some feedback from RaISe on that issue?

Mrs G Nesbitt: I think that that might be helpful, because it is standard practice.

The Committee Clerk: Finally, on the equality and human rights issues, are members content with the assurances?

Members indicated assent.

The Chairperson: Grace, thank you very much. I thank Committee members for their patience. Grace, I would appreciate if you could send the other information that we asked for over the summer period. We can then consider that before we finalise our report.

Mrs G Nesbitt: There is another evidence session on Wednesday 5 September, at which I will go through the Bill clause by clause, which I did not get to do today. I propose to send the Committee something in writing on that. I think that it might be helpful for members to have that in advance of that meeting. It will be quite short, so it may save your some time.

The Chairperson: Thank you very much.