Northern Ireland Assembly

Committee for Finance and Personnel

OFFICIAL REPORT (Hansard)

Public Service Pensions Bill: DFP Briefing

23 October 2013

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)
Mrs Judith Cochrane
Mr Leslie Cree
Mr John McCallister
Mr Ian McCrea
Mr Mitchel McLaughlin
Mr Adrian McQuillan
Mr Peter Weir

Witnesses:

Mr Stephen Ball	Department of Finance and Personnel
Ms Margaret Coyle	Department of Finance and Personnel

The Chairperson: Margaret and Stephen, you are very welcome. We will go straight to the table of issues, as we have a lot to get to on today's agenda.

Ms Margaret Coyle (Department of Finance and Personnel): It might be useful at this stage to tell you about where we actually stand — what our position is at this time — in relation to the two documents that you issued to us. On the paper of 10 October, we have a submission with the Minister on the drafting issues that you referred to. What we can probably tell you is that we have not identified any issues in the paper that would require a departmental amendment to the Bill. However, we do draft the outline of the clauses that you raised in detail in that response document. Unfortunately, it is still with the Minister. The only reason I am saying that is that I do not know what detail you want to go into in relation to that letter of 10 October, because we have detailed our response in that paper. You may want to bear that in mind. In general terms, the response offers scope to the Committee to propose amendments on some of the technical aspects, because they will not have any impact on the policy carried through in the clauses.

The Chairperson: Can you elaborate on that?

Ms Coyle: We are not prepared at this stage to make a departmental amendment, but we will certainly consider any amendments that the Committee may want to bring forward. That is specifically in relation to your letter of 10 October on the drafting issues and technical aspects.

Unfortunately, again, we cannot positively respond to any of the amendments that you have asked us to consider in your letter of 17 October, because that still sits with the Minister. What we can do is give you a steer as to what we will positively consider in relation to amendments.

The Chairperson: Is there a backlog of correspondence with the Minister? There are a few delays in correspondence.

Ms Coyle: I believe that there is.

The Chairperson: When will that be ironed out?

Ms Coyle: We have asked for those to be dealt with as soon as possible. It is our hope that he will come back to us relatively quickly. There is no reason why we cannot give you a written response to your letter of 16 or 17 October as well. Hopefully, at that stage, there will be confirmation of whether there will be a departmental amendment or whether we will be rejecting the ones that you have brought to our attention.

The Chairperson: Margaret, do you want to take us through what you can?

Ms Coyle: OK. The first one is the enabling Bill. There is really no drafting practice whenever you are presenting a Bill. As far as we are concerned, the guiding principles are set out in the clauses, so the Department is not prepared to change that and have an overview clause. Regarding the position of other schemes, I can tell you that a submission is with the Minister for the North/South scheme. The Department's intention is that the North/South scheme will be part of the Public Service Pensions Bill on 1 April 2015.

The other two schemes that are referred to — Northern Ireland Water and Ulster Sheltered Employment — will decide to incorporate into either the main schemes or their own specific schemes. As we mentioned last week, there are issues in relation to them being funded schemes and the cost to them to close schemes. Potentially, although they will be part of the Public Service Pensions Bill, the timescale may be extended for those two bodies, as they are funded.

Mr Stephen Ball (Department of Finance and Personnel): One of the other issues with clause 1 was a request for an amendment to insert "similar" to describe the relationship between schemes. We were unsure whether that would bring any benefit to the description. The accepted way that schemes are described is "other schemes", and there would be differences in the way that calculations are made for a pension scheme, a compensation scheme and an ill-health scheme. Their purposes are different. We thought that "other" probably best describes that and "similar" would not really add a lot to define it.

Ms Coyle: Replacing "local government workers", then — again, this will be detailed in our response to your letter of 10 October.

Mr Ball: Our feeling is that that is already defined in the Bill. Schedule 2 has a description of what each of those categories essentially means. It would be a function of secondary legislation for schemes to establish eligibility criteria, and where there may be groups within those groups, they would be defined at that stage. That negates the need to go back and change the primary legislation for a minor change that is more suited to being described in the regulations for the scheme.

Similarly, there was a request to consider replacing "teachers" with "teachers in the public sector". Again, the secondary legislation would normally define the status of those teachers. There is a provision in the Bill that allows schemes to extend their access now. That will, effectively, operate the fair deal policy when it takes effect. It does not rule out the fact that teachers might have a different status if there was some change in their employment status within the Department of Education. It really just facilitates that and leaves it for secondary legislation to clarify where needed.

Ms Coyle: In relation to the retrospective provision and retrospective effect, a few issues were covered in your latest document — points 25, 26 and 27. I will try to cover that in its entirety. Clause 23 requires responsible authorities to consult, with the aim of reaching agreement on pension changes that would have retrospective effect. Where agreement may not be achievable, the clause provides for an effective trade union veto on the change where it would have "significant adverse effects". Trade unions would also have representation on pensions boards, which would be involved in determining the significance of any adverse effect.

That links up with retrospection. We talked last week about the definition of "significant adverse effects", and it is very difficult to pin down. Different authorities may have different opinions on what

they perceive to be a significant adverse effect. Indeed, they have the opportunity to exercise a discretion in that area.

What we have to take into account is that the pension authority has an obligation to inform those affected, with an aim to reach an agreement. If an individual has a different viewpoint on the significance of an adjustment to their accrued rights, and believes that an authority has, for example, gone too far outside the parameters of what you would see as being a significant adverse effect, they have the right to judicial review. The Department's view is that pension authorities will not want those extreme measures to be exercised and will, therefore, attempt to resolve the issue prior to recourse to the courts. I know that it is a very discretionary area, but there are safeguards there so that, if it got to a point where you would see that as not being a significant adverse effect, but one person did perceive it as being significant, there are roads that you can go down in relation to judicial reviews or whatever if you wanted to take it further.

Mr Ball: It leaves the way open for the significance of an effect to be discussed, especially in the pension boards. One piece of advice that we got on how we might define a significant effect is that, really, we cannot; it will have to be tested. A significant effect could be a significant effect, but it might be a small effect. It is a function of the pension boards to weigh the significance.

The Chairperson: Have you considered any other safeguards on that clause?

Mr Ball: On significant effect?

The Chairperson: Yes.

Mr Ball: I think that, if something is deemed to have a significant effect, we will require the consent of trade unions. We will have to place a report in the Assembly, and it will have to be made with a view to reaching an agreement. There is an Assembly scrutiny role there in that the report will have to determine how those discussions were carried out in varying what is significant in terms of a detriment to pension scheme members.

Mr Weir: You may have covered this point while I was out of the room, but would that report contain guidance? If the Department ultimately has to take a decision as to whether something is significant or not, we are in a bit of a blank on that. Would the intention be to produce guidance as part of that report on how you would define "significant"?

Ms Coyle: I think that there would have to be. If the Department was to say that it found something insignificant, it would have to justify why it thought that.

Mr Weir: I appreciate that you are not in the position to agree on the hoof to something, but if, for example, without prejudicing the timescales, there was a requirement on the Department to produce that guidance, would that be something that you would look at reasonably favourably?

Ms Coyle: Yes.

Mr Weir: It is something that it would have to do anyway, so consequently —

Ms Coyle: That is right. The report is definitely a requirement. The Department would have to lay a report if there was an agreement on what it identified as being significant or insignificant. It is a safeguard, and it has Assembly scrutiny.

Clause 3 deals with the absolute rights to veto. I know that this has been brought up a few times, and it is a concern that the Committee has brought up before, but this is a standing convention. It is basically a normal constitutional principle or convention that DFP is tasked with to ensure propriety and regularity on behalf of the Assembly. The mechanism for doing that, particularly in this case, would be via the DFP approval role provided in the pensions Bill. Clause 3 contains additional provisions about how the power to make scheme regulations under the Bill can be used. I know that we covered some of this last week, but an example of legislation that requires explicit DFP approval is expenditure falling out of the Northern Ireland Consolidated Fund. It is because pensions are paid out of annually managed expenditure (AME), and it is cash drawn down from the Northern Ireland Consolidated Fund. It is probably the most important factor leading to greater scrutiny from DFP

where it might not be in other cases and for other policies. That is the role that DFP has always played in determining consent in relation to, in this particular case, consenting legislation for the Bill.

Mr Ball: There are impacts in the other clauses of the Bill that deal with new measures for scheme governance, cost-cap control and valuation generally. It is the Department's view that it would be important to have the consent of the Department to ensure that those procedures are being followed.

The Chairperson: There has been the suggestion that the Assembly should have some sort of role with regards to clause 3 by one of the unions. Has that been considered at all?

Mr Ball: On the making of scheme regulations generally?

The Chairperson: Yes.

Mr Ball: The scheme regulations will, under the Bill, be subject to the negative resolution procedure.

The Chairperson: Where is that reference?

Mr Ball: It is dealt with later in the Bill under Assembly control and procedure for making regulations — "Other procedure".

Ms Coyle: It is in clause 24.

Mr Ball: Clause 8 also sets out the types of schemes that can be made. It specifies that regulations made by the Department must be subject to the negative resolution procedure.

Ms Coyle: Clause 24(2) states:

> *"Scheme regulations are subject to negative resolution in any other case."*

That follows on from the retrospective provision.

Mr Ball: It is not a departure from the normal approach under the Superannuation (Northern Ireland) Order 1972, under which most of the schemes were made. The accepted process is negative resolution.

The Chairperson: We will come to that further down the line. Do you want to move on to the next one?

Ms Coyle: View to allow "any person to exercise a discretion" — basically, departmental discretion is a common feature of existing pension scheme rules. It provides flexibility in the delivery of ancillary benefits and entitlements in respect of service given by scheme members. An example is death benefits, which are classed as discretionary in most schemes. It is a permissive provision that is beneficial to members in that such discretionary benefits are treated separately for purposes of taxation. Generally, inheritance tax does not normally apply in those cases.

Mr Ball: One other example is the Civil Service scheme. There are no current compensation scheme arrangements for members of the new nuvos arrangement. Therefore, the Department would make an ex gratia payment. The discretion would enable it do to that until such time as the appropriate rules are in place.

Ms Coyle: If you need more detail on discretion, we will follow that up in further correspondence. We do not see a requirement for the Department to consider an amendment to clarify the consequential amending provision. It does not apply in this. We cannot overturn the core requirements of the Bill.

I think the next one is actually covered — to follow up on issues arising from clause 3 — because it was basically around the DFP consent. If you are happy enough, we will move on to the next one.

The Chairperson: Yes.

Ms Coyle: The BMA and effective governance — basically, as far as governance is concerned, it should be noted that the pensions board should have equal numbers of employer and employee representation. That covers the issues that it had about effective governance. That will obviously apply to all the schemes.

Mr Ball: There was a related issue about circumstances in which the scheme manager may be different from the responsible authority. For most of the existing schemes, there is a very strong link between the scheme management and the responsible authority. The responsible authority is the Department that makes the regulations. Some functions will be performed by the accounting officer and the scheme administrator. They will be recorded in the scheme's annual accounts. The only case in which there would not be such a direct link is the local government scheme, and I think there are historical reasons; the district councils had responsibility for those schemes. They have a more distinct role as the scheme manager, but there is still a very strong link between the two. There is nothing in the Bill that would take away from the responsible authority's control and influence on the pension boards.

Ms Coyle: Most of the unfunded schemes have the dual responsibility. As Stephen rightly pointed out, local government is slightly different.

Pensions board, then. Because we have answered that, do you want us to cover that again, Chairperson? I know the answers are —

Mr Ball: The Department felt that it was unnecessary to name unions or groups of unions in the Bill, and that secondary legislation could address that. Again, that would be a usual function of secondary legislation rather than having to define it in primary legislation and going back and changing it. If there is a routine change in union representation or scheme management, they may change their own procedures, as they can.

Ms Coyle: The NASUWT suggested that the rationale for this amendment was that the Department for Education's current proposal for England and Wales was that only two out of 12 representatives of the pension board of the teachers will be direct teacher union nominees. As Stephen said, they can determine that at scheme-level discussions. There is nothing to stop them from putting into their scheme regulations that, for example, there should be six employee representatives and six employers to keep a 50:50 balance. We would not be prepared to make any amendment to the Bill in relation to that. Most of the other points that they made can be covered in secondary legislation.

On clause 5, what I can say is that this is something you brought up in your latest documentation. As I said, we still have to get confirmation from the Minister, but we will positively consider amending that one. That would probably be the best way of explaining that. As far as we are concerned, it is a non-contentious proposal, and it provides flexibility for NILGOSC to act as the pensions board if that is required, because they are slightly different here than in GB.

We have already agreed that with local government officials through the pensions Bill working group. So we will certainly consider replacing "must" with "may" at clause 5(2). There may be a consequential amendment if there is a departmental amendment to that, but we will speak with the drafter about that and may have to amend clause 5(1). We will certainly let you have sight of that prior to it being tabled.

Mr Ball: The next point was in relation to clause 5(3) on securing compliance with scheme regulations and pension boards. The Bill includes new powers for the pension regulator, and there will be a new code of practice. Under that code, the regulator will have its own powers to place fines or request amendments, so it will have a regulatory role with schemes in terms of their pension boards. It will extend into the actions taken by a pension board and scheme manager.

One of the other questions was on the word "desirability". We felt that that was purely descriptive. It would not add anything to change the terminology. The test of whether it was desirable would be whether they complied with the requirements of clauses 14 to 17, which deal with the pension regulator itself, and the clauses for the pension boards and their remit. We would not necessarily have a problem with changing "desirability" but it would not really serve a function because the regulation is included in other clauses and will be in scheme regulations.

Also in connection with clause 5, there was an issue about replacing "satisfied from time to time" with a specified period. We took our guidance on that from the Interpretation Act (Northern Ireland) 1954.

That would be a term used there and would allow scope for Departments to have their own guidance and procedures for when those checks would be made. The Interpretation Act would define the meaning and effect of "time to time" in the legislation.

The Chairperson: "From time to time" could mean anything: how long is a piece of string?

Mr Mitchel McLaughlin: Does it mean that you need not do it?

Mr Ball: I think it gives scope for the Departments to make their procedures for assessing "time to time", but we can certainly get you a formal definition of that in writing.

Mr Mitchel McLaughlin: I can understand the logic in giving the Department the flexibility to do it, perhaps, sooner rather than later if it so deemed, but is there a need to specify the length of time by which it should actually exercise it?

Ms Coyle: If there was a delay or a longer period of time was required? We can certainly check that out and come back to you on that.

Mr Mitchel McLaughlin: It would probably be sensible to allow the management authority to just step in or review whenever it felt it necessary, but we should be able to couple that with a requirement to do it in a specified period that allows elasticity but certainty — an extended period of time but within which it must revisit.

Mr Ball: Section 17 of the Interpretation Act (Northern Ireland) 1954 states:

> *"Where an enactment confers a power or imposes a duty, the power may be exercised and the duty shall be performed from time to time, as occasion requires."*

I think the intention is that there will be a further definition of what that will be, but it will be in secondary legislation.

Mr Mitchel McLaughlin: I would like to press that issue so that we specify a time while allowing the management authority to conduct its own review in circumstances that may arise.

Ms Coyle: We will consider that issue and come back.

The Chairperson: What about the point about a failure to declare a conflict of interest in 5(5)(a) and 5(5)(b)? Is there an amendment?

Ms Coyle: There is guidance from the Pensions Regulator, and I know there are still discussions and consultations on that, but that clearly defines what a conflict of interest would be. I assume that it will be a requirement of any pension authority or responsible authority to make sure that there is no conflict of interest in those particular areas.

Mr Mitchel McLaughlin: What would the sanctions be for failure to comply?

Mr Ball: The Pensions Regulator would have the powers to hold people to account. In some cases they could bring them to court. In lesser cases they would impose fines or request a correction to be made.

Mr Mitchel McLaughlin: Are we going to get a written response on that?

Mr Ball: Yes.

Ms Coyle: Do you want us to go into more detail on clause 7? I know that Stephen covered the whole issue of the pensions board and the scheme advisory board. What we can say is that it is defined in the Bill that there should be equal representation of employer and employee on the pensions board. It does not specify that for the scheme advisory board, but, again, I think that is something that they should be doing when it comes to the scheme's secondary legislation.

Historically, in relation to scheme advisory boards, until recently we had a governance group that advised on scheme changes. We ensured that there was equal representation of employee and employers on that particular board. That is our understanding of what the scheme advisory board should entail as well, but, again, it could be specified in secondary legislation.

The Chairperson: Why not specify it in the primary legislation?

Ms Coyle: I can only assume that, because the pensions board has the higher authority, and you would have member representation on the pensions board, the ultimate decision would lie with the pensions board and the representations there. That is the assumption as to why it is not in the Bill for the advisory board. Again, it is something we can certainly consider and respond to. The next one is similar.

Mr Ball: There is a query on Northern Ireland Local Government Association (NILGA) evidence regarding the appointment of scheme advisory boards in England and Wales and having them appointed in Northern Ireland also. We thought that the pension board provisions set out the high-level requirements. If schemes wanted to follow that road, they could perhaps address it in their own consultations with the trade union side and under secondary legislation. However, we thought that there might be a slight conflict in the devolved power there. It is not something that we want to include in the Bill.

Ms Coyle: The next one relates to what Mitchel talked about, as far as the responsibility for timings are concerned. The expectation is that the pensions board will consult the scheme advisory board on the desirability of scheme changes when action for scheme changes is under consideration. Provision is made on a statutory basis that the information will be provided when requested and at the appropriate time. Therefore, we assume that the advisory boards would have the discretion to offer a view on the desirability of scheme changes as a matter of course at any time.

The Bill permits scheme advisory boards to establish their own ways of working. So again, at the secondary legislation stage, we will determine what way to set up the scheme advisory board.

Mr Ball: I think that the scenario for first considering scheme changes is when there is a pressure on the cost-cap mechanism, or where there is some overarching legislation with which schemes need to comply. In the past, the Civil Service scheme has dealt with anti-age discrimination legislation and civil partnership legislation. In that case, it would be desirable for the pensions advisory board to give us the information when it is requested; but it does not preclude them not doing it at some other time, when one of those issues does not arise. The intention is to ensure that it is provided when it is required.

Ms Coyle: The final point is about this:

"in circumstances where no more than one of each exist".

That is where the board offers advice to the scheme manager. This is not likely to be the case in current Northern Ireland arrangements. Provision is made for the eventuality that there might be more than one manager, as is the case in the local government scheme, but we spoke to the local government officials, and they were content to retain that provision at the last working-group meeting. So that was their decision on that.

Mr Ball: Clause 8 is about types of scheme. We provided a response to that. Do you want us to cover that again, or perhaps cover the areas for which we have not provided a response?

Ms Coyle: We are aware that we are covering a lot of stuff that you will probably receive over the next day or two on these particular issues and in detail.

Mr Ball: The next area regarding clause 8 that is not dealt with is on the National Association of Schoolmasters Union of Women Teachers (NASUWT) proposed amendment to remove paragraphs 8(1)(b) and (c). This goes to the heart of the Bill which is based on policy decisions for theoretical schemes. So we are not prepared to move on that.

The next provision that we have a response on is in the same clause, at subsection (2). We have been asked to consider an amendment to insert the words "to any extent" after "benefit schemes".

Benefit schemes are defined at clause 33, so we thought it unnecessary to include it again. The actual wording is used there.

Ms Coyle: We have covered 13, on expenses. The next one then is clause 9. Is that not right?

"What is the Department's view on an amendment to require the regulations to be made by affirmative rather than negative resolution, given that this goes to the heart of the Bill?"

The Chairperson: In terms of clause 8(5), the key issues paper asks:

"What is the Department's view on an amendment to require the regulations to be made by affirmative rather than negative resolution"?

Mr Ball: Our approach was that current practice is to use negative resolution. If there was an occasion to propose to change the type of scheme, that would engage the higher consultation. Later in the Bill there is a procedure for engaging in consultation where those protected elements would be challenged in a proposal. So the removal or replacement of the negative resolution would not necessarily have the effect of changing the type of scheme or the benefits that would be delivered anyway. It would only take you into a new arena, where you would be engaging in further enhanced consultation with unions. There would be a requirement to consult with an aim of reaching agreement and to lay a report for the consideration of the Assembly, which would come to you, and the negative resolution would apply. So it could be scrutinised and challenged in the Assembly if it was deemed necessary to do so.

Ms Coyle: We are trying to get a balance. There are certainly issues that we believe are extremely important and should be subject to positive resolution, but if we started changing a lot of stuff from negative resolution to positive resolution, the Assembly could potentially be inundated with reports that it would have to look at in day-to-day business. It could actually leave the Assembly at a standstill if we were to have positive resolution for every aspect of it. There are certain issues on which we say that negative resolution has been practiced before and has worked. There is that element of scrutiny.

The Chairperson: Obviously there are different clauses that refer to negative or affirmative resolution, but if there are any examples of past practice, and you are saying that there might be a great volume of resolutions coming forward, if we could have evidence of that we would be better placed to make a judgement in regard to those clauses.

Mr Weir: In terms of negative resolution, sometimes people see a false dichotomy between the two. I know that there is a lot more time involved in affirmative resolution, but, presumably, the negative resolution still comes. The issue is that the particular Committee, or anybody who can pray against that, can force that into direct debate. So there is the opportunity for a trigger mechanism to ensure that there is a debate, and it would then require a vote of the Assembly under those circumstances anyway. The bigger difference is probably in the practicalities and the fact that there would be a guaranteed specific debate as opposed to a triggered one.

Ms Coyle: For those reasons, we see negative resolution as being quite robust in those particular areas, because that safeguard is there.

Mr Mitchel McLaughlin: The background to pension reform in itself is against the successful Government challenge to the unions' veto on a whole range of national wage agreements and so on. Consequently, there is a concern that the duty to consult with a view to finding agreement does not actually provide any reassurance against the loss of that particular veto. It has happened, and things have moved on, but, in dealing with the pension schemes, there are huge concerns, and in my view they are exacerbated by that loss of the veto. So, I think that people are looking for the Assembly to have a direct involvement in the process and the regulations that will be used to manage this scheme, and I do not think that they will get that reassurance from the negative resolution process. Affirmative resolution means that, even at cross-party level, Members can stand up and have their say and can make representation, and they will certainly be lobbied. I accept the practicalities of what Peter has said about negative resolution, but we are also trying to deal with a very concerned public, particularly those who are looking at their pension arrangements. No matter how this is presented, they see this a negative development. They see a negative impact, and I am not sure that they will be impressed by the distinction that people will make between adverse effect and significant adverse effect if that goes to the court. So, they want to see their elected representatives taking a hand here.

Ms Coyle: We appreciate that, Mitchel. We had this discussion when we were putting through the Superannuation Bill. The same issue arose in relation to the trade union veto. From the Department's perspective, we thought that the negative resolution procedure was still appropriate because, as Peter said, it can end up in the Assembly if, for example, an MLA wanted it to. It can be debated at the Committee, but, equally, you can have a separate issue where —

Mr Mitchel McLaughlin: That is straightforward. I do not have any difficulty with that. I know that an individual Member can pray against it. I am talking about the discussions and negotiations before it reaches the Assembly, and I am talking about adding a bit of muscle to the process of seeking to find agreement.

Ms Coyle: If there were to be a report, the Committee would look at it and ask how far people went in trying to reach that agreement. So, obviously, the report would have to be very detailed. Again, these are things to consider. The Committee can raise this in writing with us, and we will certainly consider it. I know where you are coming from, but I cannot see the Department moving on this particular issue, because it has always been thought that the negative resolution procedure is robust enough. You can certainly write to us about that, because it covers quite a few areas, and I think that those are the points that you are trying to make.

Mr Mitchel McLaughlin: That is exactly the point that I am making.

Mr Ball: A lot of these changes will be permissive and routine and for which negative resolution will suffice. There are some that may be more complicated and contentious, and the idea that we clarify that it is a means to reach an agreement and that there is a report to be laid for the attention of the Assembly is intended to strengthen the consultation and scrutiny processes there. There are areas in the Bill where affirmative resolution will apply, for example where there is a proposal for a retrospective change. I take your point, but it is a question of how far you want to apply it in every case.

Mr Mitchel McLaughlin: This has been a long session, and we have still some work to do, so I do not want to drag it out too far. However, in the case that keeps recurring about the firefighters, there is the potential for a locally constructed agreement. Agreement can be reached at a regional level that allows for the process of early retirement in circumstances where there is an operational implication that needs must. They are concerned about whether they can design a scheme that they can sign up to, even if there would be an impact on their pension entitlements, and which we can sign up to. That, I think, requires an enhanced requirement to find agreement, because, otherwise, you could refer to the body of the law, the legislation and the negative resolution process in the Assembly, all of which may not allow those locally designed solutions to emerge because we are talking about an agreement between the authority and the union side.

Ms Coyle: We would argue that those would be scheme-specific discussions and that those discussions would not be in the Bill.

Mr Mitchel McLaughlin: I do not think that you would write it into the Bill, but, if you had a process that provided the maximum encouragement to find agreement on the management side, life could be easier all round. That is why I say that. I would not say that the power-tripping Departments would want to abuse the process, but I think that we need to be able to address these matters, particularly with a view to finding solutions to what are very difficult issues that an individual might face.

Mr Ball: At the moment, there are discussions with fire services in Great Britain.

Mr Mitchel McLaughlin: I am aware of all that. Our approach should take account of anything that emerges there. It looks as though certain flexibilities are starting to emerge. So, let us give ourselves as much scope as possible without inundating us with any more work; we are so busy. I know that you are concerned about us.

Ms Coyle: Very much so. *[Laughter.]*

Mr Mitchel McLaughlin: Thank you.

Ms Coyle: We were asked for the Department's view on an amendment that would clarify that the revaluation is required at specified periods.

Mr Ball: I think that that is one of the areas where there will be scope for schemes to determine how earnings or prices are used to revalue accrued benefits in service. In the case of firefighters, for example, they might choose to use earnings as a measure of revaluing, whereas the Civil Service scheme would use the consumer price index (CPI). The Department of Finance and Personnel would have a role in making orders to determine those, and they would be based on statistical figures, such as the published CPI and figures for earnings. DSD makes an order to revaluate earnings for social security additional pensions, so the role would be similar. It is quite a formal procedure, whereby the Department of Finance and Personnel probably determines the indices but the individual Departments have scope in how it would be applied. There is a requirement that the Department make those orders annually. That is the procedure that will be used when they are applied.

Ms Coyle: It is DSD and DWP.

Mr Ball: Departments retain their own scope for how they revalue benefits. I think that that is the main message.

There was an associated issue about circumstances when an order for revaluation would result in a decrease. However, that would happen on very rare occasions. I think that there was a negative revaluation in the pensions increase two years ago, but it was not applied. I will go back to the Assembly procedures. I think that this provision means that a negative resolution would apply in normal conditions, but an affirmative resolution would apply in a case in which there was a negative revaluation. So, it would come to the Assembly to determine whether that negative revaluation should be applied in the scheme.

I think that the idea behind its being in the Bill is so that positive and negative revaluations can be tracked for the function and the cost cap. However, it would be a function of the resolution procedure to see whether a negative would be applied.

There was also an issue on consultation on those orders. Our view is that routine orders determine CPA rates and increases in earnings that would apply. The current practice is that there is no requirement for consultation in the parent legislation, which, I believe, is the Social Security Contributions and Benefits Act 1992, which DSD made. DFP would make a corresponding order for public service pensions. There is no formal requirement to consult, and the rationale is to give effect to financial matters that are related to public statistics. I do not know whether you want to do any more on that.

Clause 10 relates to the pension age. The NASUWT visited that to consider removing the requirement for the length of the state pension age. Again, that will be one of our core provisions in the Bill with the aim of reflecting the Hutton commission's recommendations and the Executive's agreement in March last year. Therefore, we would not consider amending that.

The Chairperson: Is it still the Department's view that the Executive agreed to 68 as the age? Grace said in the previous session that the Executive agreed, in the full knowledge that this would change the state pension age to 68.

Ms Coyle: It will change to 68 at some time. I think that it may happen in 2046 or something. It is way ahead, so it will —

The Chairperson: You seem convinced that the entire Executive agreed that in full knowledge.

Mr Ball: Their agreement was that it would reflect the state pension age, even if the state pension age is changed from the current age of 65. There are plans for it to increase.

The Chairperson: So, it was 65.

Mr Ball: The minimum age would be 65 or the actual existing pension age at any other time.

Ms Coyle: Clause 10 specifies the age of 65 or state pension age to clarify that. There could be a variance in the state pension age. That is the case, even at the moment, because of aligning women with men for the state pension age. For some people, the state pension age is different, so it was just about giving that flexibility.

The Chairperson: I just thought it strange at the time that the Executive agreed to 65, but it was the Department's view last week that, under that previous agreement, the age was 68.

Mr Ball: Maybe our statement took account of the fact that it will be 68 in the future.

The Chairperson: But the Executive have not agreed to 68.

Ms Coyle: No; they agreed to the pension age, whatever that may be.

Mr Cree: If it were 60, and a member of a scheme were unfit, would that result in a deferred pension situation, or would there be a medical termination?

Ms Coyle: As far as I know, the ongoing discussions for firefighters are trying to determine what happens when someone is, for example, found to be unfit and cannot go on until they are aged 65 or the age for their state pension. They are considering the possibility of their going out on ill-health retirement. So, if they can determine that they are unfit because of their line of work — this is where it can get rather complex — I think that they are trying to agree as part and parcel of discussions at the minute that those people could go out on ill-health retirement. That would mean that they would get their full pension, because there would be no actuarial reduction on ill-health retirement.

Mr Cree: So, does that mean that it is not a deferred pension situation?

Ms Coyle: No. If they agreed that it happened because of ill health, and it was proved that the work that they did resulted in ill health, they would go out on an ill-health pension, which is paid straight away.

Mr Cree: I used the word "unfit", which is different from ill health.

Ms Coyle: This is where the complexities come in. They have to be seen to be unfit for the work that they are doing as a result of the job that they did to date but not as a result of any external factors. So, that is where it can become complicated. However, if that is determined —

Mr Cree: They would not be in ill health, then.

Mr Ball: Each scheme will retain its capacity for ill-health provisions and actuarial reduction if someone decides to leave early. The only real situation where a deferred benefit situation arises is when someone resigns from service. If they do not stay on until pension age, they could resign on the benefits —

Mr Cree: You could say that, if there were not jobs for unfit people to do, what is the logical outcome?

Mr Ball: The logical outcome is that schemes should consider that in the regulations that are being put in place.

Mr Weir: I know that discussions with firefighters are ongoing at a national level, and —

Ms Coyle: That is right. That is taking in the whole macroeconomic situation and taking it a stage further. However, that is certainly something that they are considering, which would mean that firefighters would not have to actuarially reduce, even though they may be under the age of 60.

Mr Ball: I think that they might be concentrating on fitness. One of the recent reports into pension age for firefighters recommended that there should be consistent fitness levels across all fire services. The current pension age for that scheme is 60. Although it is a related issue and there are impacts with age-related inability to reach the fitness, it is the determining factor. That report made recommendations for scope for the fire service schemes to provide early departure avenues for staff who did not meet the fitness levels. Some of the things that are being discussed in GB at the moment are actuarial reduction and minimising the effect of such a reduction.

Mr Cree: So, does that mean that it is not resolved yet?

Mr Ball: No. It is still being discussed.

Ms Coyle: I think that there is a conference today at which attempts are being made to tease things out. I do not know any more details of it, though.

The Chairperson: If a firefighter were to retire at 56, would they get the reduction applied from state pension age?

Ms Coyle: So, do you mean if they retire on grounds not of ill health but were to retire early under actuarial reduction?

The Chairperson: Yes, at 56.

Mrs Cochrane: We touched on that last week. Their actuarial reduction would take them up to their normal pension age, which, under the Bill, would be 60. If there were, for example, a 3% reduction each year, you would be talking about 12% of a reduction to their pension. That is because it would be for the four years. I am not sure what their reduction is, but it would be for the four years from age 56 to 60.

Mr Mitchel McLaughlin: Is that 3% only an indicative figure? It is not —

Ms Coyle: It is only an indicative figure. I do not know what it is for —

Mr Mitchel McLaughlin: You cannot rely on it.

Mr Weir: We have heard suggestions that it is closer to 4% a year.

Ms Coyle: The point that I am trying to make is that, whatever percentage it is a year, it will take them up only to their normal pension age, which is 60; it will not take them up to state pension age. The retirement age of 60 has been agreed for firefighters.

Mr Ball: The next area for which we probably have not given a line before is clause 11, which concerns valuations. In its evidence, the BMA stated that DFP's powers of directions should be tempered by the requirement to consult wider than the Government Actuary's Department on the valuation direction. We have a paper with the Minister on that, so we hope to give you a written response very soon.

Ms Coyle: We will positively consider that, which is probably the best way to put it. We have already discussed it with the collective consultation working group. We agreed to consult for 12 weeks on the directions for the valuations. Acceptance of the amendment would demonstrate a positive approach to consultation, so we see no issues with that. It is likely that we will consider tabling an amendment to clause 12 to that effect.

Mr Ball: There is a requirement to consult with the Government Actuary's Department. That reflects that those directions are about dealing with finance procedures and how and when valuations are carried out. As Margaret said, we are talking to trade unions about consulting on the directions, because this is a new provision.

Ms Coyle: That also relates to the employer cost cap. The intention is that we will consult for 12 weeks to cover the directions for valuations and those on the employer cost cap. So, it will be a joint consultation. We will consider an amendment to include that further provision in clause 12 so that the DFP regulations may be made only after the Department has consulted the relevant stakeholders. So, again, it is just to cover that there will be a consultation. We would certainly consider amending that clause to that effect.

The Chairperson: I am conscious of the time. We are running close. Are there any other amendments that members want to focus on to draw us to a close earlier? Are members happy enough to wait until we get a written response on the areas that have been raised?

Mr Mitchel McLaughlin: Yes, we will be revisiting some of this anyway.

Ms Coyle: Yes. It is just unfortunate that, on the particular clauses that we are considering amending, we could not come back and say that, having spoken to the Minister, that would happen. We just wanted to give you a steer that we would certainly be reconsidering those issues, and it may give you an idea of the amendments that the Committee might consider.

The Chairperson: The message to the Minister is that he needs to get his skates on with this, because we have the Bill Office waiting. If we get this next week, the Bill Office will have only a week to draft amendments. Ultimately, any further inaction will frustrate the Committee in carrying out its statutory role. So, he needs to get this sorted.

Ms Coyle: I make a commitment that we will contact the private office today and try to get an update for the Committee on where those two papers are at the moment.

The Chairperson: OK.

Mr Cree: Responses were due last Friday and today. Do we have them all now?

Mrs Cochrane: That is what I am saying. They are both with the Minister at the moment.

Mr Cree: Does that mean that we not have them at all yet?

Ms Coyle: Last Friday's paper is currently with the Minister. Given the timeline for this one, we were more or less just going to cover these issues in the evidence session. However, if it helps, we can obviously cover in a written response to you the issues that you sent us in a letter on 17 October. Hopefully, by that stage the Minister will have come back to us, and we can be more positive in our response to the proposed amendments.

The Chairperson: Thank you.