



Northern Ireland
Assembly

Committee for Finance and Personnel

OFFICIAL REPORT (Hansard)

Public Service Pensions Bill: Northern
Ireland Human Rights Commission Briefing

2 October 2013

NORTHERN IRELAND ASSEMBLY

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Members present for all or part of the proceedings:

Mr Dominic Bradley (Deputy Chairperson)
Mrs Judith Cochrane
Mr Leslie Cree
Mr Paul Girvan
Mr John McCallister
Mr Ian McCrea
Mr Mitchel McLaughlin

Witnesses:

Miss Rhyannon Blythe	Northern Ireland Human Rights Commission
Dr David Russell	Northern Ireland Human Rights Commission

The Deputy Chairperson: We move on to the Public Service Pensions Bill and evidence from the Northern Ireland Human Rights Commission. We have an apology from the chief commissioner, Professor Michael O'Flaherty. Present today are Dr David Russell, deputy director of the Human Rights Commission and Miss Blythe, who is an assistant case worker with the commission. You are both very welcome. I begin by asking you to make an opening statement.

Dr David Russell (Northern Ireland Human Rights Commission): Thank you. I reiterate the apologies from the chief commissioner for not attending; he had a prior commitment this morning.

The commission provides advice to the Committee on whether the Bill is compatible with the obligations pursuant to section 69(4) of the Northern Ireland Act 1998. The commission will refer only to the international obligations, the treaties and the jurisprudence to which the Assembly is bound. That duty falls under section 26 of the Northern Ireland Act and requires Departments to act compatibly with international obligations.

The commission will not make comment on the need or otherwise of the state to reform the pension system. It is legitimate for such reforms to take place, and it falls within the margin of appreciation of the European Convention on Human Rights (ECHR). The commission will also make submissions on the International Labour Organization's social security (minimum standards) treaty to which the UK is a state party, the International Covenant on Economic, Social and Cultural Rights, and the European Social Charter. We will not comment on the type of system used to operate a pension scheme — ie, the debate over final salary or average earnings systems — nor on the details and structures for the operation of the pension system.

The issues that the commission wishes to raise with the Committee are detailed in our written submission and can be summarised as follows. Under clause 3(3), there is permission for scheme

regulations that make retrospective provision. Such regulations are further subject to clause 23, which requires the consent of those affected. The commission raised concerns over the legal certainty of that provision, given that the circumstances in which it may be used is unclear. The concern was also raised by the Joint Committee on Human Rights on passage through Westminster of the equivalent legislation. We note that the Department has commented in response to the Committee that it would be within the terms of the scheme's regulations that legal certainty would be ensured and not the enabling legislation. In response, the commission contends that the European Court stated at paragraph 88 of the case of *Silver and Others v the UK* that:

"A law which confers a discretion must indicate the scope of that discretion."

and would, therefore, consider that in the circumstances of any legal action.

In respect of the revaluation of earnings under clause 9, the commission notes the safeguard of the affirmative procedures where a decrease will result, and we welcome that. However, any reduction in pension benefits would be an interference with article 1 of protocol 1 of the European Convention on Human Rights and would require justification by the Department. Although a reduction itself is not problematic, if a reduction in pension entitlements amounts to an excessive or disproportionate burden, it would be problematic under the protocol.

In respect of linking the pension age with the state pension age, two issues arise. First, a change to pension age may amount to an interference where a member has a legitimate expectation of receipt of it at a given age. Secondly, distinctions between categories that fall within the prohibited grounds of article 14 would be required. That is the non-discrimination provision of the convention. The commission is aware that it has not been tested in the court yet with regard to other status, but we think that there is the potential for other status to be engaged with the differentiation in terms of the prohibited grounds under article 14.

The Deputy Chairperson: Miss Blythe, do you have anything to add at the moment?

Miss Rhyannon Blythe (Northern Ireland Human Rights Commission): No, Chair.

The Deputy Chairperson: Thank you very much, Dr Russell. You referred to the concerns raised in the commission's submission. What would be the options for improving the legal certainty of clause 23? Clause 23 is the "procedure for retrospective provision".

Miss Blythe: Our concerns arose over the lack of detail. Some scope needs to be indicated as to the extent of the power to permit regulations, especially where they are retrospective. It would not be for the commission to suggest amendments to that clause.

The Deputy Chairperson: OK. Is the commission aware of any comparable provisions in other statutes that might offer a model?

Dr Russell: No.

The Deputy Chairperson: Not at the moment, OK.

In your view, how might the consultation requirements in subsections 2 and 3 be strengthened?

Miss Blythe: Of clause 23?

The Deputy Chairperson: Clause 23, yes.

Dr Russell: The commission has not made the issue of consultation clear in its submission. We have not really addressed the issue. Our only concern is that consultation should take place with the persons affected. In this instance, pension-holders are the rights-holders, so it would be up to the Department to ensure that the consultation was robust enough and that all those affected had input to the process. Outside of that, if you can give me more specifics, I will certainly consider them, and, if I cannot provide an answer now, we will come back to the Committee.

The Deputy Chairperson: Clause 23(2)(b) states:

"the authority must first consult the persons specified in subsection (3) with a view to reaching agreement with them."

Dr Russell: Yes, and the commission is in favour of that clause.

The Deputy Chairperson: OK.

Dr Russell: Participation from the rights-holders is guaranteed in a number of the treaty bodies.

The Deputy Chairperson: The Department of Finance and Personnel (DFP) has responded to your submission. I am sure that you have seen its response. It points out that under clause 23(4):

"the responsible authority must lay a report before the Assembly".

In your view, is there any safeguard to ensure that the report is laid in sufficient time in advance of the Committee or the Assembly considering the scheme's regulations? Do you have a view on that?

Dr Russell: I would have to go away and look at it. The time would have to be sufficient for the Committee to consider what is proposed by the Department. In this instance, the difficulty is, I guess, that the question would arise if it were affecting the individuals. I am not sure whether article 6 of the ECHR on a fair hearing would be engaged; whether they would have the opportunity to appeal the proposals. However, to the extent that the Committee's view is that it provides a sufficient time frame for scrutiny by the legislative body, the commission would be content at that. It would be outside our jurisdiction to make particular comment on it.

The Deputy Chairperson: OK. What is the commission's view on the Department's powers of direction, including, for example, at clause 12(3):

"The employer cost cap is to be set in accordance with directions given by the Department of Finance and Personnel."?

Is that necessary or would an order-making power subject to Assembly control provide more balance?

Dr Russell: We would not comment on that. As I said at the outset, the direction from the Department falls clearly within the margin of appreciation under the protocol. So, it is perfectly within the gift, from a human rights perspective, of the Department to set down directions.

The Deputy Chairperson: OK. I will open the floor to members. Do any members have questions? Mitchel?

Mr Mitchel McLaughlin: No. I am happy enough.

The Deputy Chairperson: OK; as there is no one else, I thank you very much for your attendance and evidence. We will, perhaps, consult you in the future if the necessity arises.

Dr Russell: Thank you.