



Northern Ireland
Assembly

Committee for Finance and Personnel

OFFICIAL REPORT (Hansard)

Public Service Pensions Bill: DFP Briefing

6 November 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 Paul Girvan
Mr John McCallister
Mr Mitchel McLaughlin
Mr Peter Weir

Witnesses:

Mr Stephen Ball	Department of Finance and Personnel
Ms Margaret Coyle	Department of Finance and Personnel
Mrs Grace Nesbitt	Department of Finance and Personnel
Mrs Blathnaid Smyth	Department of Finance and Personnel

The Chairperson: You are all very welcome to the Committee again. Grace, before we kick off, something has been brought to my attention by some Department of Finance and Personnel (DFP) workers in Derry. It has been reported that some 80 jobs may be on the line at Waterside House. Sources have indicated that there might be a loss of £1 million to the local economy and that some options are being accelerated for partial or full outsourcing. I have spoken to Committee officials, and there has been no contact with the Committee on any of those proposals. Would you care to elaborate on that?

Mrs Grace Nesbitt (Department of Finance and Personnel): I am happy to provide an initial update to the Committee this morning and to attend a fuller evidence session. I realise that this morning's session is very much concentrating on pensions, and we have quite a lot of detail to get through. I will give you a few initial comments, and then, if you are agreeable, I will write to the Committee and set it out in more detail. I am happy to come back again at a further evidence session. I do not want to take up too much time this morning.

It is incorrect to say that 80 jobs will be lost from Civil Service pensions. That is factually incorrect, and the fact that it is factually incorrect has been communicated to staff and the unions repeatedly. It is true to say that we are in the middle of a project to look at replacing our IT systems. At the minute, we have two systems, and, to keep it really simple, one administers and one pays pensions, and our arrangements for those contracts are coming to an end. The intention is to look at options to replace those with a single end-to-end system that will both pay and administer pensions and have a self-service facility. That in itself will require fewer staff to operate it. Therefore, there will be —

The Chairperson: So there will be job losses.

Mrs G Nesbitt: Just let me finish, and I will explain. I will then be happy to take your questions. Fewer staff will be required to operate the system, so there will be fewer staff working in Civil Service pensions. There is a range of options, which fall into two broad camps. I will come on to the staffing implications after I finish this little introduction. One option is that we simply replace the system and that it continues to be operated by civil servants. The second option is not only to replace the system but to look at a managed service. Under the guidance for procurement, we are required to look at that range of options. Those options are still being considered, and we are working through the outline business case at the minute.

It is true to say that, if the option for a managed service is adopted, it will obviously have a greater impact on the number of civil servants required to operate it. So what will happen to the staff? What numbers are we talking about? We are certainly not talking about 80, because, as you will be aware from the officials from Civil Service pensions who are sitting with me, pensions do a lot more than administer and pay pensions. We have a resource for policy and legislation, a resource on communication and other functions to do with finance. So the figure of 80 is factually inaccurate and extremely misleading.

I move now to what will happen to the reduced resource of people who will be required to operate whatever option is adopted in Civil Service pensions. Those people will not lose their job; they will not, as one local paper said, be on the dole. Rather, in accordance with our agreed procedures, which are in our HR handbook and were agreed following consultation with the trade unions, they will be redeployed in line with our policy on redeployment. There are rules and protocols in place about more junior grade staff, their mobility and where they can be redeployed to.

In summary, there will be a reduced staffing requirement for Civil Service pensions. The quantum of that reduction will depend on the option that is adopted. Nobody will lose their job as a civil servant. Rather, they will be redeployed, and the intention is to endeavour to redeploy them within the general area. We have policies in place that enable us to do that, and we have done it over the years for other areas. When people move and get promoted, for example, we do not fill that vacancy substantively. We fill it with temporary promotion, maybe, or by way of other arrangements that we have at our disposal. We can manage that process over a period, working with staff and the unions to accommodate people as best we can.

Maybe it would be helpful if I wrote to you with some more details.

The Chairperson: How many do you predict will be redeployed?

Mrs G Nesbitt: We do not know yet. We are still working through the figures. I am not in a position to —

The Chairperson: Is there any estimate?

Mrs G Nesbitt: Not really; we are still working through that. It is early days.

The Chairperson: Could it be 50 to 100, or 20 to 30?

Mrs G Nesbitt: It could not be 100, because we do not have 100 people working in pensions.

The Chairperson: So it is fewer than 100; we are getting closer.

Mrs G Nesbitt: I am conscious that this is an evidence session, so I am loath to give exact figures, but, off the top of my head, we have 93 people working in pensions. The split between those who are working in administering and paying pensions is maybe about 50. I would really need to get exact figures, and, as I said, I am loath to give anything else to the Committee. We also have a fair proportion working in other areas such as policy and legislation, finance and communication. Not everybody who works in pensions works in the paying and administering of pensions. Not everybody works in those processes. So the figure of 80 is definitely inaccurate.

I will provide a written submission to the Committee and try to set out as much information as I can and give you an update on where we are with the general procurement process, if that would be

helpful. If you want to schedule another slot, we can come back. I think that I am here for the whole month of November anyway; I am so popular. *[Laughter.]* If you want to add it on to one of those sessions, I am happy to oblige. I am not sure what your timetable is, because I realise that the Pensions Bill is taking up a significant amount of your time. I appreciate the time that you are spending on it. I will give you a written submission, Chair, if that would be acceptable. If members wish, you can slot me in to one of the other sessions in November.

Mr D Bradley: Can you mention again the two options that you referred to?

Mrs G Nesbitt: You look at a number of options in an outline business case. One option is to do nothing. There are variables in the range of options, but they fall into two broad camps. One is that we replace our IT system and that it will continue to be operated by civil servants. It is an end-to-end system that will administer and pay, and have self-service. The staff operating it and the unions understand that it will require fewer staff because it will be a modern, up-to-date system that will do both functions and there will not be an interface, because it is self-service. That will in itself require fewer staff to operate. That is one main set of options.

The other option is that we go down the route of having a managed service, where the functions of administering and paying pensions would no longer be carried out by civil servants. We are required to look at, explore and examine these options in the interests of getting best value for public money. That is the process that we are now following. Those are the two broad options, but there are variables within them.

Mr D Bradley: Does "managed service" mean that they would be outsourced from the public service?

Mrs G Nesbitt: Yes. It would no longer be operated by civil servants.

The Chairperson: As you are not sure about the numbers that are going to be redeployed, I presume that there will be no decisions made on this until after Christmas.

Mrs G Nesbitt: We are working on and refining the outline business case at the minute. That has to go through a number of internal approval processes that the Committee may be aware of. It has to go to the finance part of DFP and then the supply part, which happens to be in DFP. Two parts of DFP have to consider that, which would then inform a submission to Minister Hamilton, who will then be asked to make a decision. Ideally, we would like that to happen this side of Christmas, because one of the issues that I am mindful of, if I can elaborate for the Committee a little, is the cost of delay. That is over £60 million for the Civil Service scheme. I am reluctant to refer to the Government Actuary's Department (GAD) costs yet again, but I have to. If we do not have the revised Civil Service scheme in place by April 2015, we will face a substantial penalty from the Treasury, so whichever option is adopted in the procurement process, the sooner we have that resolved and completed and a new system in place, the better, so that we can work on it and make sure that it is up to delivering the specific scheme requirements for the new scheme in April 2015. We are up against time pressure in this process as well.

The Chairperson: Will the trade unions and the staff who will be affected be consulted on the business case before it gets to decision stage?

Mrs G Nesbitt: Trade unions and staff have been consulted on this matter for some time.

The Chairperson: Have they seen the business case?

Mrs G Nesbitt: I am just coming to that. Just for the record, trade unions and staff have been consulted for some time. They understand the process. The protocol in DFP is that business cases are not shared with the trade union side until after the Minister has seen them and taken a view. That is the protocol that has been operating in this Department. Other Departments may have a different approach, but that is the approach that has been operated in the Department of Finance and Personnel. We are not doing anything different in disclosing the business case; that is done with other DFP business cases of this nature.

The Chairperson: I have one final point. You said that redeployment would be done within the local area. Would staff stay within the city, or is there a possibility that some people would have to move to Belfast?

Mrs G Nesbitt: There is a possibility of that, but because we will be trying to identify as soon as we can what the option is through working with staff and managing that over time, different rules apply to redeploying staff. Without going into too much detail, more junior staff — for example, staff who are AAs and AOs — have what is called a "mobility restriction" on how far they can travel. The intention in the policy would be that they should be redeployed within the constraints of mobility. For staff above those levels, we are looking at working with staff to accommodate them.

We are fortunate in that we have a number of competitions coming up, internal and external, which will create a certain churn and turnover throughout the Civil Service. Our intention is to work with staff to get the staff that we have to redeploy to the type of job that they would like and also to the location that they would like as far as is possible. That is our intention, and we plan to do that over a period of time. It is not as though, whatever number of staff we reduce by, it will happen in one day. There will be a phased transitional process that will be managed over time.

Mr Cree: Have you had any discussions with your colleagues in the Department of Agriculture and Rural Development (DARD) about this issue that may lead to mutual benefits?

Mrs G Nesbitt: I have not had any direct discussions with DARD. However, I recently made a presentation to DARD on the people strategy — I think that I will be doing the same for this Committee in November — and I am very aware of Ballykelly and its potential. That is a strong possibility and an opportunity for staff, but, until we know the numbers we are dealing with, we cannot say that there will be x number of people, the type of people they are and the areas that they would like to go to. I am very aware of the issue, and we will certainly be picking up on it.

Mr Cree: Will it be part of your strategic planning?

Mrs G Nesbitt: It will be part of my planning. I do not know whether I would call it strategic or not at this stage.

The Chairperson: OK, Grace. We will move on to the substantial business. We will go through each response to each issue. It may be more useful to concentrate on those issues and the related clauses about which members have queries and concerns.

Mrs G Nesbitt: I realise that there is a lot to get through, so, to make the best use of our time, we — more honestly, my colleagues — have gone through and looked at the detail of what we promised the Committee and what the outstanding issues are. We prepared a little note that I think will pick up on all your issues. In the interests of time, I will go through that, if permitted. I will do that as quickly and as promptly as I can.

The Chairperson: I have heard that before.

Mrs G Nesbitt: I will try to talk as quickly as I can. I think that that will be the best use of our time.

The Chairperson: How many pages is it?

Mrs G Nesbitt: It is about 10 pages, but I will talk quickly. When I was in the canteen this morning, I put a line through some bits.

The Chairperson: I think that it would be more useful to go through each clause. I will take members views on that. It will be only particular clauses that members will want to focus on. Are there any views?

Mrs G Nesbitt: Issues were raised that are not necessarily about a clause. There are general issues, and there are also items that I said that I would follow up on. It is entirely down to you on what you think would be the best use of your time.

The Chairperson: Members, what do you think?

Mr Cree: It would have been nice, Chair, to have had that in advance so that we could have had a look at it first.

Mrs G Nesbitt: We were pressured for time, to be honest, and we did get quite a lot of information back to the Committee, so not that much is outstanding. That is why I think that, if I cover the issues in my note, you can tick them off.

The Chairperson: Are these the issues that we already have in our papers?

Mrs G Nesbitt: No, some issues were outstanding, and we were still to follow up on them. We are going to spend more time talking about whether we do it or not. If you give me five minutes, you can then put a guillotine on it.

The Chairperson: Five minutes: your time starts now.

Mrs G Nesbitt: The issues are firefighters; Northern Ireland Local Government Association (NILGA) correspondence; teachers; clause 32; and negative resolution. Other issues were opt-outs and links to schedule 1 bodies.

On firefighters, we have confirmation of the proposed scheme design from officials in the Department of Health, Social Services and Public Safety (DHSSPS). I will clarify a few points very briefly. There are currently two options on the table with the Fire Brigades Union. Under option 1, members who are aged 57 can retire early with immediate pension benefits and be actuarially reduced up to 60. Under option 2, the age is 55 rather than 57 for people who can retire early with immediate pension benefits and be actuarially reduced up to the age of 60. There are other rules for people who leave earlier than that, but, in the interests of time, I will not go over that. If you would like more detail on the firefighters' proposals, it might be helpful to write to the Department of Health, or I can do that on your behalf.

Mr Weir: I think that it would be helpful if we got that formally.

Mrs G Nesbitt: I am very conscious of your time. To be clear: would you like us to write, or would the Committee like to write?

The Chairperson: Does the Committee want to write?

Mr Girvan: I think that it should be the Committee.

Mrs G Nesbitt: That is fine. Thank you.

Mr Mitchel McLaughlin: How are firefighters regarded? Are they members of the wider public service?

Mrs G Nesbitt: Yes.

Mr Mitchel McLaughlin: In their rotation to non-operational roles, is there a wider canvas in which we can consider the options, other than simply in the Fire Service, which has very limited options?

Mrs G Nesbitt: I would need to defer to colleagues in the Health Department. Are you suggesting that a firefighter could transfer to the Civil Service, for example, or to another part of the public sector? Is that what you mean, Mr McLaughlin?

Mr Mitchel McLaughlin: Yes, basically that is the theory. We could go for ridiculous examples, but a limited number of firefighters will have difficulty in achieving the operational fitness threshold come 55 years of age and may not be able to afford the option of retiring early and taking a reduced pension or wish to retire. However, there may be skills that would make, for instance, Fire Service back-office functions a viable option if there were sufficient places, which we are told that there may not be. I really have no information on what skills set firefighters who cannot achieve the fitness threshold would have. The Health Department is a significant Department, and I assume that more options would be available there than within the Fire Service and, if it comes to it, within the wider public sector. There may be sufficient spaces there to provide that type of assurance and security for firefighters.

Mrs G Nesbitt: To explain that, I will need to get more information from colleagues.

Mr Mitchel McLaughlin: I am quite happy to have you look at that and come back to us rather than have a theoretical discussion about it.

Mrs G Nesbitt: I do not think that it is possible. If you are employed as a firefighter, the Fire Service is your employer, and you are a member of the firefighters' pension scheme. You would not have any automatic right to move to another part of the public sector to work. That just would not happen. You would have to apply and compete like other people. Likewise, if civil servants were no longer fit for their particular duties and requirements in the Civil Service, they could not perform a back-office function in the Fire Service because they are separate employers and organisations. However, I will check. Perhaps the Committee would like to raise that issue if it is writing to the Health Department, but that is my understanding of employment law.

Ms Margaret Coyle (Department of Finance and Personnel): I think that Mr McLaughlin's point is that the DHSSPS is a large umbrella, and the Fire Service falls under that umbrella. However, as Grace pointed out, the job of firefighters is specific. We could possibly check with our DHSSPS colleagues to see whether they looked at what would happen in that type of scenario and whether they could find areas of work for those firefighters.

Mr Mitchel McLaughlin: There may be unique circumstances that affect firefighters for their operational fitness requirement. Rather than erecting Chinese walls, we should be looking to make options available to people who have been faithful and effective workers. However, they reach a particular threshold that other skills and requirements do not. If we come at this issue narrowly focused, we are, in a sense, making it difficult for them and impossible for us.

Mrs G Nesbitt: Would the Committee like to raise that when it writes to the Department of Health, or would you like me to follow it up with that Department?

The Chairperson: We can chase it up with the Department of Health.

Mr Mitchel McLaughlin: That may or may not be possible, but I suspect that, if firefighters are regarded as belonging to the family of the public sector, maybe their options have just not been explored.

The Chairperson: I am just trying to tease this out in my own head. Theoretically, if you have a firefighter aged 58 who cannot meet the fitness requirements in the Fire Service, there is nowhere in the back office for him or her to go. What are the options for the Department there? Would they be forced —

Mrs G Nesbitt: You would need to check that out in detail with the Department of Health. I provided information on the options that people have and at what age those apply for actuarial reduction. It would be best if more detail came from the Department of Health.

The Chairperson: Even though that person may be willing to work those extra years until the age of 60, will the Department of Health just say, "We cannot keep you on"?

Mrs G Nesbitt: Sorry, I mean the Department of Health for the rules and options in the firefighters' pension scheme and what opportunities there would be in the Fire Service. I am not in a position to speak in detail to the Committee about that.

The Chairperson: Surely, you must have some sense of the issue.

Mrs G Nesbitt: I do not have any sense in terms of the question that Mr McLaughlin asked; I am just speaking from my perspective of employment law. I do not have detail on what the scope and operational requirements of the Fire and Rescue Service in Northern Ireland will be.

I have provided the Committee with the information from the Williams report on capability. The report did not recommend a reduction in the age of retirement for firefighters. It made other recommendations, but it did not go as far as saying that firefighters could not work up to 60. I do not have more detail on the firefighters' scheme with me.

The Chairperson: I am going to ask you another question to which you probably do not know the answer.

Mrs G Nesbitt: OK. The clock stopped at about five minutes.

The Chairperson: There is an annual turnover of firefighters who reach pension age. How many are we talking about?

Mrs G Nesbitt: I am sorry, but I do not have the detailed scheme-by-scheme information. Can I start the clock again?

Mr Mitchel McLaughlin: Can you remember where you were?

Mrs G Nesbitt: Yes, I skipped about five pages.

There was a suggestion from local government that the provision be made in clause 7 to appoint the scheme advisory board established for schemes in England and Wales as the board for Northern Ireland also. It was suggested that that would be more efficient. That is an amendment that we will not be considering. We touched on that briefly at the session on 23 October.

As the Assembly is a devolved administration, the appointment of the scheme advisory board will be the responsibility of the relevant devolved Minister, scheme officials and scheme representatives. The details of the appointments and the make-up of the advisory board will be addressed in scheme-specific consultations with the union and as part of the secondary legislation issue. That will provide scope for them to look at the issue and address it.

Mr Weir: You are saying that it is a matter for Ministers because responsibility has been devolved. Mention was made of the Northern Ireland Local Government Association's (NILGA) preference — I declare an interest as a member of NILGA — for this to be handled on the... Is the option there for the Minister to say, if he was so minded, that it should be, for the sake of convenience, handled by that bit?

Mrs G Nesbitt: Yes.

Mr Weir: So, it is a question of leaving it to the scheme-specific quantity.

Mrs G Nesbitt: The Public Service Pensions Bill is an enabling framework Bill, so there are things in the secondary scheme that are permissive.

Mr Weir: So the option would be open to him if he wanted to take it.

Mrs G Nesbitt: Yes, that is my understanding.

The Chairperson: The Department is indicating that it does not agree that the scheme advisory board should comprise a balance of employer and member representatives. What safeguard will exist to ensure that such boards are impartial and independent and that they do not exist merely to tell the Department or the responsible authority what it wants to hear on major reforms?

Mrs G Nesbitt: The Department has to look at the make-up and ensure that it has the right people. There are other references in the Public Service Pensions Bill to what those people should be and who should be members of the board. Therefore the governance arrangements are generally an improvement on how we will manage public service pension schemes. There is discretion at secondary legislation, as your colleague said, for the Department to consider that. However, there are safeguards for what is required of boards; they have a duty and will be accountable.

The National Association of Schoolmasters Union of Women Teachers (NASUWT) has suggested an amendment to clause 7, which, again, is about the scheme advisory board. It suggested that it should be a negotiating board with a wider remit than that allowed in the Bill, with equal representation from unions and the employer side. Again, we will not be considering that amendment. The scheme advisory board is not a negotiating board in that sense, so we do not agree with that.

Consultation is the term — we will revisit that — that we have used in pension legislation, and that is correctly reflected and links in with clause 21. It touches on the local government issue that you just dealt with. The secondary legislation gives scope there, with the unions, Departments and respective Ministers, to refine scheme-level arrangements and to look at the detail to make sure that it is delivering appropriate and proper governance. Have members any comments on that clause? I will just pause there.

I turn to clause 32. This relates to the amendment that the Committee asked about, whether the term "may" should be replaced with "must". The Department will not be considering that amendment. Let me explain. The purpose of clause 32 is to give existing public body schemes powers to include a link to the provision of normal pension age, which is scheme pension age or state pension age provision, if they do not already have those powers. Because this is about giving powers and not about an obligation, "may" is the correct legal term to use. That is the advice that we have been given.

Clause 32 is designed for a public scheme that wants to reform its current scheme but does not have the power to do so. Clause 31, however, is designed to force schemes to reform if they have not done so, by closing them to new service and making them either join a reform scheme, which must have normal pension age provisions because of clause 10, or to set up a new scheme. In summary, therefore, our view is that the term "may" is correct, and we have taken advice on it.

I will pause there. Are there any questions on that? No? OK, then I will keep going.

There has been discussion at evidence sessions about the negative resolution procedure. The Committee expressed concern that people look to the Assembly to have a more direct involvement in the process of regulation. The Department considers the negative resolution process to be appropriate. It provides the Assembly with the option of debating any proposed scheme changes if necessary, and a Committee or an MLA can pray against a decision, which will force the issue to a direct debate in the Assembly. We consider that the affirmative resolution procedure would be inappropriate. Most scheme regulations are technical and make quite detailed amendments. An individual statutory rule can take up to six months to introduce under negative resolution procedure. We need to be mindful of the time that that takes and that any delay could have a financial consequence.

I will give you some examples. We make regulations for the Pensions Increase (Review) Order, which may not be as much as our pensioners would like, but it often comes through with a very short timescale between when the decision is made and when it is adopted by the Department for Social Development (DSD), following on, usually, from the Department for Work and Pensions (DWP). The time we have to get the legislation through, and the pension increases in place for pensioners across the public services by April each year, is very short. That is done extremely quickly — sometimes in a matter of days, not even weeks. Another example, which the Committee will be well aware of, is the increase in employee contributions. Again, that has had to be done quickly because we are aware that any delay will cause a financial penalty with Her Majesty's Treasury. We had the option of using retrospective powers, although we did not get that through in time. However, that was a place to which we did not want to go because not only would people have to pay more, but they would have to pay more in a shorter time. Those are some examples of the legislation that we make and our view on it. I will pause there.

The Chairperson: You should not pause as your time is nearly up. *[Laughter.]*

Mrs G Nesbitt: OK. I will press on to the issue of opt-out information. If the Committee wishes, I will provide that in a detailed written submission. Do you want me to skip that bit?

The Chairperson: Yes.

Mrs G Nesbitt: OK.

Mr Mitchel McLaughlin: May I comment on the impact of the changes on broad pension entitlements as people understand them? I am not sure that it is appropriate to say that this is the commonly used approach. It is a unique situation that we will visit in this debate, and I hope that we will not revisit it for a generation at least.

Mrs G Nesbitt: So do I. *[Laughter.]*

Mr Mitchel McLaughlin: So I am not sure that you can rely on the defence of the use of negative resolution procedure, for which you argue. This is an issue of significant public and political interest, and I think that the parties will have some difficulty in accepting that rationale.

Ms Margaret Coyle (Department of Finance and Personnel): Our concern is that there are so many minor scheme amendments. Where do you draw the line between the negative and positive? You need to be very careful. As I said on the 23 October, we could be inundating the Assembly with loads of minor scheme regulations. You really do not want to go down that road either. It is about deciding on the best approach to take. We have affirmative resolution in important matters such as retrospective provision; therefore it is about deciding where it is appropriate and being very careful that the Assembly does not give itself a lot of work on issues that are not particularly —

Mrs G Nesbitt: Some of it is quite technical.

Mr Mitchel McLaughlin: I understand. I am making the point that this is a once-in-a-generation process and the usual procedures do not match the significant interest and expectation that people have that the Assembly and their elected representatives will assert themselves on this matter. In my view, there is a possibility that people will nitpick at every issue. If that happens, MLAs will sort that out because they will not get themselves bogged down or overloaded with work. I do not see them volunteering for that process. This has major significance, and we should approach it with the most focused attention that we can give it.

Ms Coyle: You are prepared to be in the firing line instead of us. Is that what you are saying?

Mr Mitchel McLaughlin: No, we will put the blame where it belongs. *[Laughter.]*

Mrs G Nesbitt: I can feel it already.

Mr D Bradley: Clause 24 lays out when regulations will be subject to affirmative procedure and says that one such case will be when:

"(procedure for retrospective provision having significant adverse effects) applies"

Who decides the significance of the effects, and will that be agreed with the scheme members' representatives?

Mrs G Nesbitt: I do not know that it will necessarily be agreed. I referred to that in the written submission to the Committee, because we tried to get a definitive legal view on what "significant" meant. We talked about it last time, and I used the word "substantial". Interestingly enough, that was also the word that came back from our legal advisers. So I was semi on the right track. It is very difficult, I think, to have an absolute definition of what is significant; that will have to be looked at case by case. I am advised that "significant" is a word that appears in legislation generally and that people talk about a "significant disability". However, one person's definition of "significant disability" might differ from another's. I appreciate that it is a difficult, subjective term, and we have tried to give as much information to the Committee, and to get as much from our legal advisers, as possible; however, I cannot give you an absolute weighting on what is "significant". When we talk about loss of earnings, "significant" also depends on whether you are having to recoup money that somebody has paid and to agree a schedule with them. If they have been paid in error, you have to look at their disposable income as well. It is very difficult to give a precise and absolute definition, and I have tried to give as much information to the Committee from our legal people as possible on it. However, I cannot offer any more information on that point.

Mr D Bradley: Who will decide on what is significant or not significant? Will it be the scheme authority or DFP?

Mrs G Nesbitt: Ultimately, it will be the managers of the scheme and the respective Minister and Department who will look at it. I think that they would do that, considering earnings thresholds and all the variables that come into play when we look at pensions issues. Although it is an adjective commonly used in legislation, there is no absolute definition of the word "significant". I cannot offer any more information to the Committee.

Mr D Bradley: Would it not be appropriate for the representatives of the scheme members to have some say in what is and what is not significant?

Mrs G Nesbitt: I think that they would have a say in it and would be given the opportunity to express a view, but your question was whether it would have to be agreed, and I do not think that that would necessarily happen. You would always be seeking to agree it, but I do not think that that could be binding because you may not be able to agree it.

Mr D Bradley: Will that facility for representatives to have some say be included in the rules for the scheme?

Ms Coyle: It states that the pensions board will have equal representation of scheme representatives and member representatives. At that stage, the pensions board would scrutinise the advisory board's view on whether it would have a significant or insignificant adverse effect. So it would have the opportunity to put forward a view at that stage.

Mr D Bradley: Why does clause 24(1)(c) make an exception for the judiciary?
It states:

"they are scheme regulations for a scheme relating to holders of judicial office".

That relates to affirmative procedure again.

Mrs G Nesbitt: I will have to come back to the Committee on that. I do not have the information to hand, but perhaps one of my colleagues does. I can follow that up and give you something in writing, or —

Mr Stephen Ball (Department of Finance and Personnel): It would probably be best to give you something in writing. If it helps, the current position is that no judicial pension schemes are made in Northern Ireland legislation. Therefore, at the minute, it is not a factor, but the Bill provides for it in future. We will certainly follow that up.

Mrs G Nesbitt: The judicial pension scheme is not a devolved matter; we do not have our own judicial pension schemes. Members of the judiciary are members of the Ministry of Justice judicial pension scheme.

Mr Ball: So the clause does not really have effect in Northern Ireland at the moment.

Mrs G Nesbitt: We will consider that and give you more information on it, Mr Bradley.

Mr D Bradley: Clause 24(3) states:

"If scheme regulations otherwise subject to negative resolution are combined with scheme regulations subject to the affirmative procedure, the combined regulations are subject to the affirmative procedure."

Why not subject them all to affirmative procedure?

Mrs G Nesbitt: For the reasons that we outlined earlier.

Mr D Bradley: In that case, they will be anyway.

Mrs G Nesbitt: I will perhaps set that out in a bit more detail in writing, because I realise that that is quite convoluted legal wording. What it means is that they will not all be subject. It is stating — to go back to Mr McLaughlin's point — the current arrangements. Some exceptions will be made in the legislation such as the issue of retrospection, which my colleague referred to earlier. If it is helpful to the Committee, I will perhaps set out something in more detail and give you examples of that.

The Chairperson: I am just wondering why there is resistance to a lot of this. The figures that we received from the Department confirmed that, in the past two years, each public service scheme introduced approximately just seven negative resolution statutory rules. That is not a big number.

Mrs G Nesbitt: I refer again to the example of the Pensions Increase Order. DSD looks to what DWP does with pension increase, and, quite often, that comes through very late in the financial year. We endeavour to have that in place so that pensioners get their increase in their April pension payment. Quite often, that means that we literally have a matter of days to produce the legislation and to get it in place. The numbers may be a little bit misleading, as some of them are more work than others. The big issue for me is that our Pension Increase Order applies not just to the Civil Service but to other significant parts of the public service. That is one that we are always keen to get in place so that people get their increase as soon as it is due. We have very little time to do that.

Again, on increased contributions, it depends on how quickly we make decisions. There is provision to do things retrospectively, but I am loath to do that. It is a timing issue as well. It is also about making sure that we stick to the timescales so that, for example, pensioners are not disadvantaged.

The Chairperson: Why would you be loath to do it retrospectively?

Mrs G Nesbitt: We have the power to do increased contributions retrospectively; we have checked that out. We are looking at increased contributions for most of the public service pension schemes, for example, in April 2014. If that legislation is not in place in April 2014, the Treasury has made it clear that we will face a bill of about £2 million to £3 million a month for each delay across the public service. If a sector did not have that in place in time, we have the power to suggest to the relevant Minister that either DFP take the money off that particular sector or that employees, instead of paying the increased contributions from April 2014 to March 2015, if it is going to be late, condense that and pay the 12 months' increase in contributions over six months. I would be reluctant to do that because it is easier for people, if they are dealing with any increase in contributions, to do it over a phased period of a year rather than it being condensed into a shorter period. I would be reluctant to do that in that instance.

Ms Coyle: You said, Chairperson, that the numbers are not significant. They are not significant at the moment. Historically, however, we have found that when you introduce, for example, a new scheme — bear in mind that the new scheme will be introduced for all Northern Ireland public service pension schemes — numerous scheme amendments will follow. That figure could drastically increase once the scheme comes into being in 2015.

Mrs G Nesbitt: There could be other minor bits that we might need to tidy up as the schemes work through that in the secondary legislation to make sure that legislative process is followed and everything is consistent. Other minor amendments will be required.

Mr D Bradley: Will you give us examples of what will happen under clause 24(3)?

Mrs G Nesbitt: Yes.

Mr Weir: I presume that, as well as the Treasury indication, if you were having to use retrospective action, there is at the very least the potential for someone who benefits from a pension to get all their money. However, there will be a delay in getting it because clearly, at the time that it would otherwise have come into play, it is not coming into play.

To some extent, I appreciate some of the points that were made around sensitivities of language and the way that arguments are used in relation to that. However, is it not also the case that, to some extent, if the principal objective is to make sure that nothing is put through in regulations that people are unhappy with, there is a bit of a false dichotomy between affirmative and negative resolution, arguably in the positive sense?

Let us take Dominic's example about whether something is significant or not. If there was a degree of dispute about whether something was significant or not, the ultimate power to decide whether something is significant or not can also lie with the Assembly. By that I mean that if there was a feeling that something was being pushed through that was being regarded as insignificant but we felt that it was not, we could effectively turn it around because we have the power to pray against it in a debate that would require Assembly support. There is full scope on either side of it.

The biggest single thing is probably the amount of time that is taken and the extent to which it clogs up the system. I would have thought that we should be looking at where there is potential discontent with particular schemes where we feel that something has been got wrong.

Mrs G Nesbitt: You are absolutely correct: negative resolution provides scope for intervention; it is not just ticking a box.

Mr Weir: Sometimes, people see a certain false dichotomy with that; they feel that negative resolution means that it is effectively through, whereas there is a maximum level of scrutiny with affirmative resolution. That is not really the case in that regard. There is completely the power to stop something by way of negative resolution if there is a concern about a particular matter.

Mrs G Nesbitt: There is, and that is why that has been set up for that very reason.

I know that I am well over my five minutes, but I need to make another point. I can send you this information. You wanted information on the schedule 1 bodies, and that has been, or is about to be, issued to the Committee Clerk. That was a stretched five minutes; thank you for your patience.

The Chairperson: Clause 9 concerns revaluation. This is in reference to clause 9(1)(b) and the bottom to page 24 of the table. It states that the Committee has suggested an amendment:

"to clarify that the revaluation should be by reference that reflects changes in prices or earnings".

The DFP response may have missed the point about how closely the revaluation should follow the changes in prices or earnings. What is the Department's view on tightening the wording as was suggested?

Ms Coyle: Sorry, Chairperson, was that page 24?

Mrs G Nesbitt: There are a number of comments and a few pages on clause 9. Where exactly are you, Chair?

Mrs Blathnaid Smyth (Department of Finance and Personnel): Is the proposal to change

"by reference to a change in prices or earnings"

to

"reflecting a change in prices or earnings"?

The Chairperson: Yes.

Mrs Smyth: We would need to take legal advice on the terminology.

Mr Ball: The figures usually used are the consumer price index (CPI) figures or the published earnings figures, which are published by the Department for Social Development in Northern Ireland. There would not really be an option to use indices different from the published ones. The scheme regulations probably make reference to that. It is one of the variables in scheme design. They would incorporate in their scheme design what indices they use and whether it is consumer price index (CPI) plus 1% or earnings.

The Chairperson: Do members have any other questions?

Mrs G Nesbitt: Stunned silence. It is very technical. I feel that I have to apologise.

The Chairperson: Clause 10 is one of the more contentious ones.

Mrs G Nesbitt: What page are you at in the document, Chair?

Mrs Smyth: It is page 28.

The Chairperson: The Committee sought the Department's view on an amendment that would give individual Departments the flexibility to set the normal pension age at scheme level included in further cost-benefit analysis. The Fire Service has a clear reference to that. Does it not make sense for

Departments to have more flexibility? If there are issues of added cost and parity, can the Department not have the choice of saying that, if a small number of employees is affected by something, it can bear the cost of that, rather than it being done in an overarching way, which the Bill does?

Mrs G Nesbitt: The Department has discretion at secondary stage. That discretion could, at least in theory, be taken to the ultimate. You could, for example, say that, if people leave early on what would be termed an actuarial reduction, that actuarial reduction could be zero and the Department could make an enhancement. That would be a matter for the Department and its Minister to consider in the particular design of a scheme. It is important that, because it is a framework-enabling Bill, we have consistency across the high-level parameters that apply. I remind the Committee that there is flexibility in that, which I have said before. So, the Department considers that the right balance has been struck between setting a broad parameter to apply, but with permissive powers at secondary stage through which particular sectors or employers can look at the particular needs of their workforce. I think that we have struck the right balance there, and I think that, if it were to be changed for one scheme, it could be changed for another.

We talked about health, and I know that you heard from a representative of the BMA, which is the union for doctors. If we did something different for doctors who work in emergency departments, what about other people who work in the health scheme? So, our view is that it is correct to have that in our primary legislation, and there are flexibilities in secondary legislation for Ministers and, in particular, trade unions in the sector, to consider on a scheme-by-scheme basis how they want to address that

Mr Ball: So, they weigh up the options. We were talking about the revaluation, and they may modify the way that they revalue benefits or modify their accrual rate to give that concession for early retirement for their employments.

Ms Coyle: It all comes under the auspices of discretionary benefits, which we covered on 23 October. However, that would be the opportunity for schemes to decide on variances, because they have that opportunity under the discretionary powers.

Mrs G Nesbitt: We are saying that I think that it is right that it is in the Pensions Bill and that there is scope at secondary legislation for variables to vary — that is the best word that I can use there — so that, if an employer or a Minister wishes to choose something different, they can.

The Chairperson: OK, members. Is there anything else on clause 10? Are there any other points that you want to highlight, Grace? I will let you have another couple of minutes.

Mrs G Nesbitt: No. Do you want me to start talking again? Not really. I can feel the warmth.

The Chairperson: Do members wish to raise issues on any of the other clauses?

Mrs G Nesbitt: I can give you the opt-out rates, if you want me to talk a bit more.

The Chairperson: What are the opt-out rates for?

Mrs G Nesbitt: You asked for opt-out rates and about the impact that there had been with that, and I said that I would supply you with that information. I have it now from the Civil Service scheme. We introduced a scheme in 2007 called nuvos, which is a career-average scheme with the retirement age of 65. It is quite good to look at that scheme, because new recruits to the Civil Service have been joining from that date.

I have the figures. In 2008-09, we had 77 opt-outs, which is 0.2% of the membership; in 2009-2010, we had 150 opt-outs, which is 0.4%; in 2010-11, we had 26 opt-outs, which is 0.07%; in 2011-12, we had 4 opt-outs, which is 0.003%; in 2012-13, we had 28 opt-outs, which is 0.08%; and in 2013 to date, we have had 13 opt-outs, which is 0.04%. I think that that was in the context of increased contributions and people knowing that pension schemes were changing. I think that that is good news, because I have the view that public service pensions and our Civil Service pension scheme, which I am responsible for, is still a good pension scheme. So, it is quite good that the people who join, and particularly the young people, are choosing to stay with the scheme. We have had auto-enrolment for a long time, and it has now come into regulation. It is quite good, and, where their future is concerned, it is quite good that they are saying so. So, the figures are really very, very low. Thank you for that time.

Mr Mitchel McLaughlin: Are those figures calculated on the basis of the overall staff complement in the Civil Service or from the cohort that joined the scheme?

Mrs G Nesbitt: No, it is the overall membership. I think that your point is whether we should perhaps look at the numbers who were recruited who joined. If so, the number is still very, very low.

Mr Mitchel McLaughlin: Long-standing members of the schemes are not opting out; they cannot afford to. If we were to look at the new recruits and run the percentages, we would see that it might give us a different picture.

Mrs G Nesbitt: That is the new recruits.

Mr Mitchel McLaughlin: That is what I was asking.

Mrs G Nesbitt: Sorry, my apologies. I misunderstood. That is the new recruits, because under the new scheme —

Mr Cree: Just on that, to what other pension scheme could those people go that could be more advantageous?

Mrs G Nesbitt: None.

Mr Cree: So, what are you talking about?

Mrs G Nesbitt: You asked for information. My view is that our scheme is a good scheme. I have to be careful, because I am not allowed to give advice, but my scheme is a good scheme. We encourage people to take independent financial advice if they want to join another scheme. In my experience, people who have done that have come back and said that they will stay with a public service scheme, whatever that scheme is. That is because, even with the reformed scheme, the changes that are coming and the increasing employee contributions, it is still an excellent scheme —

Mr Cree: Grace, you are not aware of a better scheme; is that what you are saying?

Mrs G Nesbitt: I have not gone looking for one, personally. I have stayed with it and paid my increased contributions, and I have no intention of leaving it. I am quite happy to declare publicly that I am a member of the principal Civil Service pension scheme. However, we give people the choice, and they can leave it. In other jurisdictions, you are not given the choice; you have to stay with the public service pension scheme. We have not quite gone that far, but we really are encouraging people to think longer term.

Mr Mitchel McLaughlin: This is a separate question, because my brain works slowly at times. Apropos my earlier point, how many members of what we might call the uniformed services are linked to the Civil Service scheme?

Mrs G Nesbitt: I do not know whether you would call them uniformed services. The only one that I can think of —

Mr Mitchel McLaughlin: That expression is used in this report, by the way.

Mrs G Nesbitt: Where the principal Civil Service pension scheme is concerned, you would be thinking of prison officers, if you would class them as a uniformed service. The prison sector —

Mr Mitchel McLaughlin: We also came across that when we were wrestling with the equal pay settlement. It seems that, almost as an argument of convenience, sometimes they are and sometimes they are not. Sometimes they are fish, and sometimes they are flesh. If they are in common pension schemes, does the original point that I was making about there being more options for redeployment than we are presently being offered not apply? If it can apply to the pension scheme, surely it can apply to giving them options for staying in employment.

Mrs G Nesbitt: I will just give you the example of prison officers. It is an example that arose and on which I was recently asked for advice where a particular prison officer is concerned. I do not know

whether he wanted to be medically retired or whether management wanted that. I do not know the detail, but there is a view asking whether, rather than offering somebody medical retirement, they could be redeployed. However, under the particular rules, the view is that they are employed as a prison officer — that is the job that they were employed to do — and they had to be capable of doing that job, rather than moving to work as a deputy principal or a staff officer in admin.

There are particular rules on what flexibilities there are and what rights individuals have in their terms of appointment. That is a particular issue with prison officers. I am thinking of somebody who may be willing to be redeployed within the same employer and how the principal Civil Service pension scheme would apply. You will be getting information on our schedule 1 bodies, for example — I am trying to think of an example of a schedule 1 body. The Equality Commission is one such body. If somebody was working in the Equality Commission and was no longer fit to serve there, they could not simply be transferred to work in Civil Service pensions in DFP, because they are two entirely different employers. So, being a member of the same pension scheme does not necessarily mean that you have the one employer. There are differences there. I hope that that helps.

Mr Mitchel McLaughlin: It does. It is a logical enough argument, but what we have with the firefighters is a kind of interface between the normal pension age and the state pension age, and then the additional requirement of an operational fitness threshold. They are between a rock and a hard place. I think that we could probably find a solution to that if we went looking, rather than just saying to people, "Take your oil. You can have a particular pension and go, or you can —".

Ms Coyle: It is all down to the competencies for the posts. The competencies for the posts in the likes of the Fire Service or for prison officers are more specific than the competencies for the general service grades in the public service. Therein lies the problem.

Mr Mitchel McLaughlin: Would retraining operations not be offered? We offered them to retired police officers at the time of the police transition.

Mrs G Nesbitt: Organisations can do that, and they have done. Other organisations do that where they may face a reduction in the workforce or are undergoing change. They look at how they can do things to benefit their staff and equip them for other occupations or opportunities. However, if we try to work through the logistics of that, the difficulty is this: would we say, "Mr, Mrs or Miss, you are no longer fit to be a firefighter, so we're going to move you to work in the Civil Service"? They might not want to do that. If they did, how would that square with the appointment on merit principles for the Civil Service and the rules and regulations in our employment law requirement. Even though we are talking about public service pension schemes, we have a myriad of employers who are employers in their own right in how they bring people into their organisation through recruitment. Certainly, if somebody left the Fire Service, they could apply and join the Civil Service. Firefighters work elsewhere in the public service. They work at airports, which are a very obvious example, but it is an operational one. They might move into areas of health and safety as well.

Mr Mitchel McLaughlin: Yes, and fire safety advice.

Mrs G Nesbitt: They can do that with other parts of the public service; indeed, other private sector companies do it as well. So, they still have skills and competencies that they could apply, and that, in my view, would be transferable. I say that from what I know of the Fire Service and what it does, as well as from colleagues and friends who work in it. To have that as a mandatory provision could get very difficult. Northern Ireland is a very small place. The public service is not an employer; we have a number of employers.

Mr Mitchel McLaughlin: Perhaps we are flogging this, but, presumably, there is annual statistical evidence going back over a number of years of how many firefighters reach the point where they cannot match the operational fitness requirements. That kind of statistical information would be helpful.

Mrs G Nesbitt: If the Chair were agreeable to this, you could add that into your request to the Department of Health, Social Services and Public Safety. I am conscious that I am not giving you many answers this morning, Mr McLaughlin, but I do not have that information.

Mr Mitchel McLaughlin: That is fair enough.

Mrs G Nesbitt: I think that it would be helpful to the Committee to have the number of firefighters who have met, or have failed to meet — whatever way you wish to word it — the capability assessments over the years. However, I do not have that information.

Mr Ball: It could become easier in the future. I think that one of the recommendations of Williams was to have common fitness standards across all the Fire Services and a common means of assessing them. There was also a suggestion to tell new recruits of the requirement for fitness and the implications of not maintaining their fitness. I think that it will probably be easier to provide those figures in the future. It is a time of change for some.

Mrs G Nesbitt: You could still look at it retrospectively.

Mr Mitchel McLaughlin: I expect that there is some kind of data available that would help us with this. It might not be as big a problem as it sounds.

Mrs Smyth: We should also note that the framework Bill is not proposing a different pension age to what was brought in in 2006. Age 60 is something that they are managing.

Mr Mitchel McLaughlin: I am aware of that. However, neither does it address that particular interface that I just described.

Ms Coyle: For clarity, are you also looking for statistical information on the prison officers in the Civil Service scheme?

Mr Mitchel McLaughlin: No, I suppose that I am anticipating that we are going to hear from them at some stage. I think that, if we focus on the specific evidence that the firefighters presented, it might provide some kind of template for dealing with other issues that may arise but that have not been presented to us so far.

The Chairperson: OK, members. Thanks, Grace.

Mrs G Nesbitt: We were planning to sit on, if you were going to consider this issue further. Is that acceptable, or would you rather that we left?

The Chairperson: I was going to say that it is a free country, but there may be different views about that. *[Laughter.]*

Mrs G Nesbitt: I could not comment on that. If anything arises, I am certainly willing to come back to the Table, if that helps.