Northern Ireland Assembly

Committee for Finance and Personnel

OFFICIAL REPORT (Hansard)

Public Service Pensions Bill: Draft Amendments and Issues Outstanding

13 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 Ian McCrea
Mr Mitchel McLaughlin
Mr Adrian McQuillan
Mr Peter Weir

Witnesses:

Mr Stephen Ball	Department of Finance and Personnel
Mrs Grace Nesbitt	Department of Finance and Personnel

The Chairperson: I ask the Clerk to speak to the secretariat paper.

The Committee Clerk: The secretariat paper starts at page 3 of the tabled papers. There are three appendices: appendix 1 is a response received from the Department to queries that arose at last week's meeting; appendix 2 is a submission received from the Northern Ireland Committee of the Irish Congress of Trade Unions (ICTU); and appendix 3 is the draft amendments provided by the Bill Office, particularly in relation to clauses 13 and 24.

I refer members to paragraph 12 of the secretariat paper, which is on page 6 of the tabled papers. It sets out the steps and decisions that the Committee needs to take to meet the deadline of 29 November for reporting to the Assembly on the Bill. At today's meeting, the Committee needs to consider the latest Department of Finance and Personnel (DFP) response, the ICTU submission and the draft amendments to clauses 13 and 24. The Committee also needs to make decisions today on whether it is content in principle with the amendments to clauses 13 and 24.

As I have highlighted in subparagraph 2 of paragraph 12, it would be advisable that, for decisions on amendments generally, the Department's views were sought, just in case it sees a better way of achieving the same policy aims. The decision primarily in this session is on whether, in principle, the Committee is content with the amendments to clauses 13 and 24.

There was also some discussion last week around clauses 9 and 10. Issues were raised about those and some further information sought. Information has been provided by the Department in its response on the potential amendment that the Committee was considering to clause 9. Perhaps that

could be considered and decided on today, because all the information is in. Responses to clause 10 are due from the Department of Health, Social Services and Public Safety and the Office of the First Minister and deputy First Minister. They are not likely to be received until next week, so I do not think that any decisions can be taken on clause 10 this week. Those are the steps that need to be taken and the decisions required.

Paragraphs 3 to 9 of the secretariat paper set out the background and rationale to the amendments to clauses 13 and 24. Paragraph 3 outlines the provisions of clause 13. I highlight subsections (4) to (7), which make provision for a person appointed by the responsible authority or Department to undertake a review to consider whether the actuarial evaluation is in compliance with the scheme regulations, whether it is consistent with other valuations of the scheme and whether the employer contributions were set at the level required. The Committee noted that the explanatory and financial memorandum specifically states that the reviewer would be an independent person, undertaking independent verification of the assessment of the scheme's assets and liabilities to confirm whether appropriate employer contributions will be paid to meet those liabilities. There was a sense that the wording of clause 13 may not ensure sufficient independence in that regard, so the Committee commissioned the amendment to be drafted. That is included at appendix 3 to the paper. Patricia will speak to that in a moment.

Clause 24 relates to clause 23 around the whole issue of retrospective changes and the procedures for that. The Committee noted concerns from the evidence, particularly from the unions and the Northern Ireland Human Rights Commission, about sufficient safeguards in cases in which retrospective changes, particularly reductions to accrued benefits, are proposed. The Committee agreed to consider draft amendments specifically on the option of requiring affirmative resolution procedure for all retrospective changes or for all retrospective changes considered to have any adverse effect, as opposed to a significant adverse effect. That latter approach — "any" rather than "significant" — probably would be more focused in terms of the changes that are more likely to be in dispute and would perhaps take account of the Department's argument that the Assembly is unlikely to wish to have plenary time taken up by minor or non-controversial scheme changes. There is a balance to be struck with affirmative and negative resolution. The Clerk of Bills will speak to the draft amendments to clauses 13 and 24 now, and, after that, the Committee can make its decisions and consider the other issue with clause 9.

The Clerk of Bills: The first one was the request for a draft amendment requiring a person appointed to be independent of the responsible authority, and the proposed amendment has been drafted to come in at clause 13(7), which is on page 9 of the Bill. At the minute, it states:

> *"The person appointed under subsection (4) must, in the view of the responsible authority, be appropriately qualified."*

The amendment would change it to:

> *"The person appointed under subsection (4) must, in the view of the responsible authority, be appropriately qualified and must not be —*
>
> *(a) an employee of the responsible authority;*
>
> *(b) the scheme manager;*
>
> *(c) a scheme member; or*
>
> *(d) an employee of the Department of Finance and Personnel".*

So, the responsible independence that you sought is outlined there by excluding certain people from being appointed. I am happy to take questions on the proposed wording.

The Chairperson: Do members have any questions on that? No.

The Clerk of Bills: Members should turn to clauses 23 and 24. You will recall that you were advised previously about this, and certain proposals were put forward in the legal advice. The Clerk outlined those for us this morning. The second set of amendments is options for enhancing Assembly control over regulations containing either retrospective provision or retrospective provision that appears to the

authority to have any adverse effect. That is different from what exists in the Bill at the moment, which is that affirmative procedure will apply if there is:

"retrospective provision which appears to the authority ... to have significant adverse effects".

Otherwise, the negative resolution procedure will apply. There are two alternatives to what exists. We could probably draft quite a number of different ones, but it is for members to decide how far they want to go. One of the issues that you raised was how many regulations might come forward if you started to open it out to any adverse effects. I am happy to take questions on those amendments as well. Option B could be changed again. If you took away paragraphs (i) and (ii), you would just leave it at:

"retrospective provision which appears to the authority to have any adverse effect"

That is a little bit broader again.

The Committee Clerk: As I mentioned, it would be advisable to seek the view of the Department on whether it sees a better way of achieving the same policy aims. The decision today is about whether the Committee is content in principle with the draft amendments. Formal clause-by-clause consideration needs to be undertaken next week, and any amendments need to be agreed before that.

Mr Weir: There is maybe an element of which way round the cart and the horse are. I have a fairly clear idea in my own mind, particularly about the changes on the adverse impact element, and we have already had discussions with the Department on that. On the face of it, it is difficult to get your head around where there would be a particular problem with the changes to clause 13, but there may be a problem. We do at least have a representative of the Department here. I do not know whether, in a formal position, there are any initial thoughts that could be shared on clause 13, rather than the Committee, perhaps, agreeing something, then going back to the Department and finding that there is a problem when it comes to the formal bit. I just wonder, to some extent, if we might be able to short-circuit a little bit of that.

The Chairperson: Grace, do you want to come forward and give us your view on it?

Mr Mitchel McLaughlin: You could phone a friend.

Mrs Grace Nesbitt (Department of Finance and Personnel): Would it be possible to have a copy of the wording of your amendment? I do not have it.

Mr Mitchel McLaughlin: I have it here.

Mrs G Nesbitt: Thank you so much. Here is one you made earlier. Just give me a few seconds to read it, if that would be OK.

On the face of it, this seems reasonable, but I would add that we have already talked about and the Bill already describes the person being "qualified". "Qualified" in that sense is in the broadest sense of the word, which would mean independent. If you had a vested interest, then, obviously, you would not actually be qualified; you would not be fit to do the job. However, I will reflect on the wording if the Committee feels strongly that this is necessary. I am not of the view that it actually is. If you were running a scheme and you were a qualified person — this applies to any formal committees that I am a member of — particularly when it comes to outside work and outside interest, there is a bit on the agenda where you have to declare any vested interest, and you would have to withdraw. So, somebody who was, to take your first example, an employee would obviously not be independent and would not be qualified in that sense, so they could not undertake that remit. So, I am not sure what this adds, but, if the Committee feels strongly about it, I will consider it. However, in terms of good governance, which is what the pension reform is all about, I think it is a little bit nugatory and actually not necessary. That would be my initial view. Does that answer your question?

Mr Weir: Yes, it is helpful. There is an argument about whether it is necessary. I suppose, on the other hand, certainly on the face of it, I cannot see where it does particular harm. Maybe, I suppose, even to a layman reading it, if we are talking about "qualified", that can also encompass independence. I suppose that some people, when they see the word "qualified", will think that it refers to someone with an accountancy degree or whatever it happens to be and will not necessarily think of

independence. So there might be some merit in having it in the Bill if there is no particular problem with that.

Mrs G Nesbitt: I agree. "Qualified" could be taken in just the literal sense of having a financial qualification or being an actuary or whatever, but I think that, if you are actually appointing somebody to that role, you would certainly want to check it out. I do not think it adds anything, but I do not think it necessarily detracts from the thrust of the legislation. I would be happy to consider it. It would be helpful if somebody could provide us with a copy of the actual wording. Can I take your copy, Mr McLaughlin? That would help us to respond to it promptly.

Mr Stephen Ball (Department of Finance and Personnel): If it helps, I think it is also quite clear in the clause that the aims that are to be checked are quite specific in relation to the valuation process, so qualification would probably be more important than independence in the first instance.

The Chairperson: OK, members, are we content to take clause 13 forward?

Members indicated assent.

The Chairperson: Clause 24, as well. Any particular comments initially?

Mr Weir: On clause 24, I suppose I stressed this point a bit last week. At times, people place too great an emphasis on the need for affirmative resolution. If there is anything which anybody has any objection to, all they need to do is pray against it and then vote it down in the Assembly. So I am not sure that affirmative resolution provides that additional reassurance. From a practical point of view — I appreciate that the options have been well drafted — if it is any retrospective provision, having affirmative resolution on things that will benefit members of the scheme seems a bit unnecessary, to put it mildly, and may clog up a certain amount of time. I am a little wary, I have to say, even of the other one, although it is more narrowly defined, where it moves from "significant". I do not know — maybe the officials can say — whether there is a particular definition of "significant". I suppose that that is the one issue. When you are talking about "any adverse effect", and in relation to that, on any members of the scheme, I suppose that it is difficult to draft changes, unless there is something that will be beneficial to everybody, that do not, in some way, slightly adversely affect one person. You could have stuff from which 99% of people benefit and there is a very minor adjustment for a handful of people. Everyone could agree that some of it should go through without clogging up the system. I would have some concerns about either amendment in that regard.

Mrs G Nesbitt: I am not going to try to define "significant". I attempted that, and perhaps, in your eyes, I failed in that regard. It is very difficult. The member is absolutely right to say that an individual will look at it from their own perspective. For example, the whole thrust of this reform is about fairness, and those who do not progress up through an organisation will benefit from the career average approach rather than the final salary option. That is in contrast to higher earners, who will not benefit from the move to the career average in the same way. How would you balance that in terms of a "significant" adverse effect?

If you look at the thrust of the policy and you get into the majority of people affected, you could get into the quantum of how they are affected. It will be difficult. If you just left it at "adverse effect" it becomes even more problematic and complicated to define. I agree that it will be difficult and challenging. It is a word that is used in legislation with regard to disability and all sorts of other issues. It is the sort of thing that will probably emerge and be defined, perhaps, through case law as things develop and this is rolled out.

Mr Weir: I suspect that where there is something that is adverse to some people but, for example, was not considered significant, at least from the Department's point of view, we would be lobbied pretty quickly about anything that is genuinely in that grey area. If a reasonable number of people are adversely affected, you will get letters about it relatively quickly and the trade union side would be in touch with us, in which case there is always the opportunity simply to pray against it and have it provoked into the debate in the Assembly anyway.

Mrs G Nesbitt: The other dimension to that is that, sometimes, a significant adverse effect can be defined as everybody benefiting but some benefiting more than others. I have heard that, so it can get very complicated. We could have a change whereby all members benefited but some benefited more than others. Those who benefited less — I sound like I am in 'Yes, Minister' now — could argue that

they have experienced a significant adverse effect, even though they have actually gained. That is an argument that I am familiar with through other employment law issues that I have dealt with, not necessarily to do with pensions.

I acknowledge that it is a difficult area, but we have done our best to define it. The member is absolutely right: as things emerge, if there is something that is a significant adverse effect, that will be raised. It will be genuinely considered by the authority as well to make sure that it follows the proper procedure in dealing with the matter. I am not sure what more that I can add.

The Chairperson: We recently received correspondence from the trade unions on that point. Given the Department's lack of application of the Woolf-Gunning principles, the trade unions have serious concerns about what may transpire once the Bill goes through the House, unless it contains those necessary safeguards. Do you wish to comment on that?

Mrs G Nesbitt: I think we do follow the Gunning principles in how we consult and engage with the unions, and I think authorities will continue to do that.

The Chairperson: You think you do, or you do?

Mrs G Nesbitt: That is my view. *[Laughter.]* The unions may have a different view, and I could not possibly speak for them. My approach to dealing with the unions — we have rehearsed this before in relation to other issues — looking back at the evidence of when and how, is that I have consulted personally on a number of matters. My view is that I am following the Gunning principles and will continue to do so. I do not think that changing this is in line with the Gunning principles either. They are different issues.

Mr Ball: We set that out in writing in the response to the stakeholders' responses to your request for evidence on the Bill. That is in writing. To return to the word "significant", in the cases where it has been tested, it seems that "significant" is usually defined as something that is not insignificant or not insubstantial. The idea is that it sets —

Mrs G Nesbitt: It was a legal definition.

Mr Ball: So, the idea is that it sets a low threshold. It sounds like a play on words, but, if something is not insignificant, can it be measured at all? It sets a suitably low threshold for it to be tested.

Mr Mitchel McLaughlin: I do not think that we should waste time trying to define "significant" or "insignificant" when a court might take a different view. Although none of these Bills can be as elegant or streamlined as people might desire, I think that our solution lies in the second option. I will comment briefly on that. On reflection, we could probably amend the phrase,

> *"scheme regulations containing retrospective provision which appears to the authority to have any adverse effect"*

further to reduce the ability of lawyers to get in among the words and create confusion. I suggest the following wording:

> *"scheme regulations containing retrospective provision which may have adverse effect".*

Then, we move on to paragraphs (b)(i) and (ii):

> *"(i) in relation to the pension payable to, or in respect of, any members of the scheme,"*

That, if you like, individualises it or might focus it on particular groupings in the workforce. Then paragraph (b)(ii) says:

> *"in any other way in relation to members of the scheme".*

It then says, "for example". We could probably reduce that as well by taking out the words "in any other way", because lawyers would have a field day with that as well. As regards paragraph (b)(ii), which says:

"in any other way in relation to members of the scheme (for example, in relation to injury or compensation benefits)."

we could drop:

"(for example, in relation to injury or compensation benefits)".

It would make quite specific the protections or entitlements that scheme members would be concerned about.

The tension here is between the Assembly, as a relevant authority in the matter, and the scheme authorities and the potential, as the Bill stands, for unintended consequences. That is why we should protect not only members of the scheme and the scheme itself but the Assembly by making it an issue that the Assembly actually decides on over a period of time as regulations are implemented or amended. I suggest a minor amendment to option B.

The Clerk of Bills: Can I come in here? Under option B, paragraphs (b)(i) and (ii) have been taken specifically out of clause 23. It may not have been how we would have drafted it had we been starting from scratch, but that is how it was drafted. Clause 23(1) is confined to "significant adverse effects", and they have put in

"in relation to the pension payable...in respect of members of the scheme".

Clause 23(2) talks about

"Where the responsible authority proposes to make scheme regulations...which appears to the authority —

(a) not to have significant adverse effects...

(b) to have significant adverse effects in any other way in relation to members of the scheme".

That is the way in which it has been drafted, and that is why paragraphs (b)(i) and (ii) were put in. They can be taken out. That would leave you with paragraph (b). The member has just proposed to change (b) to say that they are scheme regulations that "may have adverse effect". It would raise the question of who would determine that adverse effect. If we were to change that draft, we would need to think about —

Mr Mitchel McLaughlin: You might have to globalise it, regarding the earlier reference as well. It is helpful to define the nature of adverse effect that we are trying to deal with or understand. Of course, we are talking about future circumstances. If it is less complicated to drop (i) and (ii) entirely, I do not have any strong objection to that if it makes it —

The Clerk of Bills: That is certainly an alternative that we had thought about. You could either have paragraph (b) with sub-paragraphs (i) and (ii) or without them. The reason why we added (i) and (ii) was, as I said —

Mr Mitchel McLaughlin: I see that you have lifted the words.

The Clerk of Bills: We lifted the words because members were expressing the view that they might not be happy with the "significant adverse effects" relation between clauses 23(1) and 24(1)(b), so we thought that one way to broaden it was to keep the wording but change "significant adverse effects" to read "any adverse effect".

Mr Mitchel McLaughlin: I take the view that, in the drafting of what is in front of us, people understood when they were using the word "significant" that it would be a disputed term. It was maybe indefinable. It is certainly ill-defined. Without wanting to sound paranoid, I suspect that they understood well enough that it would have been difficult to tie it down to a specific and agreed definition. We could fight over that for a long time. I would be pleased to see the word "significant" taken out but not to make it have such a global effect that every tweak and revisitation of the regulations would require an Assembly debate. We need to boil it down to specific impacts and to

provide the maximum democratic oversight as well as allowing people to get on with managing the schemes.

The Clerk of Bills: One thing that I should point out is the difference between option A and option B. Option A would require the responsible authority to put for positive resolution any:

> *"scheme regulations containing retrospective provision."*

Option B states:

> *"scheme regulations containing retrospective provision which appears to the authority to have any adverse effect".*

So, in option A, it does not have to have an adverse effect; it just has to have retrospective provision. With option B, it has to have retrospective provision which appears to have any adverse effect, which is much broader that what is in clause 23.

Mr Mitchel McLaughlin: I prefer option B. It lets people understand exactly what would be considered in any decision.

The Chairperson: Members, are there any views on Mitchel's proposal?

Mr Weir: I appreciate where Mitchel is coming from, but my view is that what is currently in the legislation is better than any alternatives that have been offered. I think that there are problems with the others. I do not know whether that would just come down to a vote on that issue.

The Chairperson: Are there any views from the officials?

Mrs G Nesbitt: I was just trying to reflect on what would happen if you broaden something out in one sense by taking away the word "significant". I am just trying to think through different scenarios that have happened. For example, we are in the process of increasing employee contributions. There are governance arrangements going forward for what is called cap and floor to balance the costs in the future between employees, employers and the taxpayer. It is difficult to project exactly what that will mean. At the minute, we have tiered protection for increases in contributions for pay bands to protect the lowest paid, and I am thinking about what would happen if we removed the term "significant". Again, you could get into the question of what the quantum of increased contribution is, so I am just trying to reflect and think through where that would potentially impact on other areas of the Bill. Could some people try to use that to block the change that is part of the overall good governance of the scheme going forward? How would that impact on the whole policy and thrust of pension reform with the intention, which I think is laudable, to make public sector pension schemes sustainable in the future? I am just trying to think through different scenarios, and I think that that is where, if you do include "significant", it offers a little bit of qualification in trying to determine and define it. I appreciate and acknowledge that it is a difficult area. Putting in "significant" gives some sort of sense behind it. If you just have "adverse", it is very wide open.

Mr Girvan: I find it difficult to see because I find that the word "any" means that, if you make any changes at all, it is open to challenge right away; whereas, if you say "significant", there is a debate about what is significant and what is not. I do not believe in opening it out too widely because you could be up for challenge every day of the week, and, having met some of the individuals, I know that they will dance on the head of a pin over one word. The word "any" gives them the opportunity to say that, if you make any changes whatsoever or any adjustment to payment, for argument's sake, the contribution has to be increased for one reason or another. Even if it is in line with inflation, some of them could say that that is "any" change to it, therefore, they could challenge it. On the basis of that, I am not comfortable with the word "any". I appreciate Peter's view on this, but I think that "significant" is an interpretation by individuals about whether it is significant for one person or another, but at least it raises the bar slightly more than "any". With the word "any", no matter what change you want to make, you will be challenged on it.

Mr Ball: It is also important to remember that the significant effects will apply in respect of retrospective adverse changes only. There is no intention under the Bill to go back and change the benefits and what has accrued; they will be protected and guaranteed. The Human Rights Commission would have something to say about it if we tried to do that. That is not the intention. The

intention is to create the schemes on a sustainable footing going forward. The only instance where you would change somebody's pension entitlement would be within the operation of the cost cap contained in the Bill. The Human Rights Commission would probably have something to say if we were trying to interfere with accrued rights.

Mrs G Nesbitt: The cost cap measures for it and control would be going forward. There is no intention that that would be retrospective.

The Clerk of Bills: Mr Girvan was talking about any change. I just want to clarify that that is not the purpose of option B. If you look at what we have at the moment, you will see that the Department is already going to have to make a decision about what is a significant adverse effect. It states:

> *"Where the responsible authority proposes to make scheme regulations ... which appears to the authority to have significant adverse effects".*

At the minute, that will go by affirmative resolution. Option B mirrors that provision. In order for it to go by affirmative resolution, it has to be:

> *"scheme regulations containing retrospective provision which appears to the authority to have any adverse effect".*

So, the only difference really is the authority deciding on significant adverse effects as opposed to it deciding on adverse effects. I just wanted to make it clear that it is not any scheme regulation that will go by positive resolution. The wording of it shows that it is a bit more narrow than that.

Mrs G Nesbitt: I thought that Mr McLaughlin was proposing to take out "the authority", but maybe I misheard you on that.

Mr Mitchel McLaughlin: I did argue that.

Mrs G Nesbitt: I should not have reminded you.

Mr Mitchel McLaughlin: There is an issue that falls between the Department and the Assembly on whether it has adverse effect or not. It is quite possible, if not probable, that there would be disagreement on that. So, yes, I was addressing that. It just invites the possibility/probability of ongoing disagreement on the administration of the scheme, which is hardly the intention of the reform process.

Mr D Bradley: What lies at the heart of this is giving greater oversight to the Assembly. The fact that the Assembly has no say over what is or is not significant is an important consideration. As you said on previous occasions, Grace, we are not always going to agree on that, and there are huge problems of definition around it. Option A is probably far too wide, in so far as it could contain what might be called "beneficial" changes, whereas, option B is more finely honed and focuses on adverse effects, which gives the Assembly greater oversight and holds the Department accountable to the Assembly in a more effective way.

The Chairperson: OK, members, how do you want to take this forward? Mitchel, do you want to put forward your proposal?

Mr Mitchel McLaughlin: Having listened to the responses and contributions, I suggest that we amend the first line in option B and leave (i) and (ii) as they stand. I suggest that we amend it by having it state "they are scheme regulations containing retrospective provision which may have any adverse effect". That would then be defined in (i) and (ii). You would therefore delete:

> *"which appears to the authority to have".*

The Chairperson: OK, members, I will put that to a vote.

The Clerk of Bills: Before you come to that decision, Chair, I should point out that taking out "which appears to the authority" creates the question of who will decide that. Do we have an alternative there?

Mr Mitchel McLaughlin: Would that not then enable the provision in respect of affirmative as opposed to negative resolution?

The Clerk of Bills: Yes, that is what it —

Mr Mitchel McLaughlin: That is the effect of that change. So, the answer to your question is that the Assembly would decide.

Mrs Liz Marsh (NIA Bill Office): I think that the point that Patricia wanted to make was about who makes the decision, in the first instance, of whether it goes to the Assembly for affirmative resolution. So, before the Assembly would come in, who determines whether the regulation may have that adverse effect? By leaving in "which appears to the authority", we define the source of that determination, whereas, taking it out leaves it open about who decides that it may have that adverse effect. However, to keep in that "may" aspect, one option could be to use the words:

"which appears to the authority to have a potential adverse effect".

There, again, you would at least have retained the definition of who determines that question in the first instance and you would broaden it out, as you sought to do, through the use of "may" to include the potential element. That is just a technical point, where a draft —

Mr Mitchel McLaughlin: I understand the point that you are getting at. Does that not put an onus on what the Bill describes as the "responsible authority" to bring it to the Assembly, because it understands that there will be adverse effects from the changes being introduced? If it can stand over its view that there is no adverse effect, gabh ar aghaidh, go ahead. That puts an onus on the authority to —

The Clerk of Bills: It does, yes.

Mr Mitchel McLaughlin: — report to the Assembly. Would that not be the impact of that amendment? I mean, it would be foolish to proceed with that wording; authorities could be challenged almost immediately. So, the onus would be on the authority to bring it.

The Clerk of Bills: I wonder whether what you are looking for is really more akin to option A.

Mr Mitchel McLaughlin: No, I cannot support option A, because I do not think that every set of responses or circumstances will necessarily have adverse effects. By casting it as widely as that, you end up arguing about whether the gain for one is an adverse effect on someone else. So, I am staying severely away from option A.

Mrs Marsh: The point was on the technical aspect of pinpointing the body that would make that determination.

Mr Mitchel McLaughlin: I appreciate that and the advice.

Mrs Marsh: Am I right in thinking that your view is that, if you left out "which appears to the authority", it is implicit anyway that the authority would bring it?

Mr Mitchel McLaughlin: They are the scheme managers as such, and, if the guidance is quite explicit that, if there is an adverse effect, it should be reported to the Assembly, I do not think that they will waste their time or anybody else's time by seeking to slide it through. It will be challenged and will be brought anyway.

The Clerk of Bills: We can change the draft. The proposal is to change option B so that it would read:

"Leave out paragraph (b) and insert-

(b) they are scheme regulations containing retrospective provision which may have any adverse effect".

Mr Mitchel McLaughlin: It would continue:

"in relation to the pension payable ... in any other way in relation to members of the scheme".

Mr Cree: Surely it should be "an" adverse effect not "any".

The Clerk of Bills: It is a question of choice, really. There are alternative ways to draft.

Mr Cree: There are two very woolly variables in one sentence.

Mr Mitchel McLaughlin: You are going to add another one.

Mr Cree: "An" is more specific.

Mr Weir: What if it has two adverse effects?

Mr Mitchel McLaughlin: "An" would apply to both individually. I will accept the suggestion.

The Clerk of Bills: It could be said that "any" is more emphatic.

Mr Cree: We could argue about it for another hour.

Mr Mitchel McLaughlin: Yes, and the lawyers could argue about it for longer than that as long as they were getting paid.

The Chairperson: We will put it to a vote.

Question put.

The Committee divided: Ayes 3; Noes 5.

AYES
Mr D Bradley, Mrs Cochrane, Mr McKay.

NOES
Mr Cree, Mr Girvan, Mr I McCrea, Mr McQuillan, Mr Weir.

Question accordingly negatived.

The Chairperson: Members, we move to clause 9.

The Committee Clerk: The correspondence from the Department includes a response to the issues that were discussed last week regarding clause 9(1)(b). The Committee had been considering an amendment regarding revaluation to leave out "reference to" and insert "reference that reflects"

"a change in prices or earnings (or both) in a given period."

The Department's response is included in the paper. Chair, I do not know whether officials want to speak on that response.

Mr Ball: I will reiterate. Our position was that the addition of the word "reflects" would not add anything to the way that revaluation would be applied.

The Chairperson: Do members have any views on this?

The Committee Clerk: Chair, we just need a decision on whether the Committee is content with the Department's clarification or whether it wishes to pursue an amendment to that provision in clause 9.

The Chairperson: Do members wish to pursue an amendment in regard to that?

The Clerk of Bills: The draft that was before you initially said leave out "reference to" and insert "reference that reflects". If Committee members are inclined to think about an amendment for that, we have had a look at that again and think that it may be clearer if you take out "be by reference to" and put in "reflect". Then, the clause would read, "such a revaluation to reflect a change in prices", rather than "such a revaluation to be by reference that reflects", which does not seem as clear. That would obviously be after you make a decision.

The Committee Clerk: I have a query that the officials may be able to advise on. If the Committee is minded to pursue the amendment, could that reduce the scope for agreeing variances at a scheme level to the annual rates for revaluation of accrued benefits? Some information that the Department provided to the Committee at an earlier stage — I think that it was back in January — explained that some of the schemes in GB had agreed the consumer price index (CPI) plus 1·5% or 1·6%. Would that amendment constrain, at a scheme level, agreeing such variances? I was not clear on that, so members might need to be clear on that before they take a decision.

Mrs G Nesbitt: You are right that it could. I reiterate that this is primary enabling legislation. We do not want something to come in, albeit well intentioned, that will create a restriction when it comes to particular Ministers looking at secondary legislation and applying that to their own sector. Therefore, the point is very well made: it is potentially a constraint, because it is not something that you can simply apply directly, and there are variables, as you indicated. It is not an automatic read-across, and the wording is appropriate. I will not be accepting any amendment. We have set out our explanation.

Mr Ball: The orders set out the baseline indices, which are designed to track the changes in the earnings and prices. After that, the schemes have their own autonomy to say, for example, if earnings should be the CPI plus 1% or CPI flat rate. All that the Department is doing is making those orders that set the baseline rate that would be applied.

The Chairperson: If members have no proposals for amendments, are they content with the clarification?

Members indicated assent.

The Committee Clerk: On the decision that was taken earlier on agreeing in principle the amendment to clause 13, given that that clause relates to funded pension schemes, particularly the local government pension scheme, it would be appropriate for the Committee to inform the Environment Committee of that decision. A copy of the amendment can be formally sent to the Department then.

The Chairperson: Are members content with that?

Members indicated assent.

The Chairperson: I thank the officials again for their advice. We will see you again next week, will we?

Mrs G Nesbitt: Yes, or the week after. We will be getting loyalty points.