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The Superannuation Bill: further evidence

This Research Paper provides further evidence for committee stage of the Superannuation Bill. It focuses on issues relevant to the Committee for Finance and Personnel's consideration of potential amendments to the Bill, including Assembly procedure and negotiation versus consultation. Information is also provided on parity in public service pension provision in Northern Ireland.

Key points

- The *Superannuation Act 1972* (and corresponding *Superannuation (Northern Ireland) Order 1972*) fundamentally altered Parliamentary control over superannuation for civil servants;
- The wider context for changes to superannuation provision for civil servants has changed dramatically since the early 1970s. At that time, benefits were being widened and improved. By contrast, the current context is for decreases in benefits;
- In relation to the Committee's consideration of potential amendments to the current Superannuation Bill, the research presented in this paper indicates a lack of statutory duties under prevailing or previous legislation which require an employer or government department 'to negotiate' with employee representatives; and,
- Northern Ireland's other (non-civil service) public sector pension schemes broadly follow parity with Great Britain. But there are some differences in local government, and education. This suggests it is not impossible to depart from parity to some degree without automatically creating unmanageable consequences for Northern Ireland's financial provision under the devolved funding arrangements.

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Introduction

This Research Paper is the third in a series by the Research and Information Service (RaISe) on the Superannuation Bill.

RaISe Bill Paper [59-12](#) provided a general overview of existing redundancy pay – both statutory, and that provided in the private and wider public sectors. It then concentrated on the provisions of the Superannuation Bill and raised some specific issues for Assembly Members' consideration.

RaISe Research Paper [69/12](#) concerned the duties that the Bill would place on the Department of Finance and Personnel to consult with trades unions, and to report the outcome of the consultation to the Assembly.

This paper provides further evidence in relation to additional issues explored by the Committee for Finance and Personnel (CFP) during an evidence session with departmental officials on 4 July 2012. It is provided to assist with CFP's consideration of possible amendments to the Bill in relation to:

- A duty on DFP to 'negotiate' changes to the NICSC Scheme rather than 'consult with a view to reaching agreement'; and,
- The Assembly procedure that applies when the Department for Finance and Personnel (DFP) introduces a new or amended Northern Ireland Civil Service Compensation (NICSC) Scheme,

Thirdly, the paper examines the application of the parity principle in relation to pension provision for civil servants, teachers, health service staff and local government employees.

This information is provided to MLAs in support of their Assembly duties and is not intended to address the specific circumstances of any particular individual. It should not be relied upon as professional legal advice or as a substitute for it.

1. Negotiation

This section provides evidence in relation to the term ‘negotiation’ in statutory provisions. During its meeting of 4 July 2012, CFP agreed to the drafting of an amendment to clause 2(2) of the Bill for further consideration. Specifically, the issue is whether the duty placed on DFP by that clause “to consult with a view to reaching agreement” should be amended to require DFP ‘to negotiate’ rather than ‘consult’.

This section is to supply evidence to inform that further consideration by providing:

- Definition of ‘negotiate’;
- The findings of research into the use of the term ‘negotiate’ in statutory provisions; and,
- Further details of the negotiations on the replacement scheme in GB.

1.1. Definition of ‘negotiate’

Black’s Law Dictionary (9th edition) defines ‘negotiation’ as “a consensual bargaining process in which the parties attempt to reach agreement on a disputed or potentially disputed matter.”

In the context of the Superannuation Bill, it may be helpful to contrast this definition with that in Black’s Law Dictionary (9th edition) for ‘consultation’ which is defined as “the act of seeking the advice or opinion of someone.”

Alternative definitions which may provide additional insight can be found elsewhere. For example, the following definition comes from a business dictionary:

*Negotiation: The art of two sides going back and forth with their demands until some sort of compromise is reached where both sides are happy with the outcome. Usually no one will get everything that is desired. The key is to focus on the points that are the most important and arrive at a situation of mutual benefit [...]*¹

In addition, the Oxford Companion to American Law identifies two distinct forms of negotiation:

*Negotiation strategy generally reflects two approaches. “**Competitive negotiation**” usually takes place when parties have opposing positions on a matter, or perceive that there is a limited resource—such as money, time, or authority—that must be divided between them. Competitive negotiation tends to be more adversarial because one party’s gain often results in the other party’s loss.*

¹ Doyle, C ‘A Dictionary of Marketing’ Oxford Reference Online. Oxford University Press available at: <http://www.oxfordreference.com/views/ENTRY.html?entry=t325.e1193&srn=1&ssid=1103819767&authstatuscode=202> (accessed 27 July 2012)

“Cooperative negotiation” generally occurs when parties are motivated to find an agreement, often one that can more completely meet both parties’ needs. While real differences exist, parties embrace a problem-solving approach in an attempt to find a more creative and satisfactory outcome.²

It is apparent from these definitions that a negotiation involves an agreement being reached at the end of the process, whereas a consultation involves the exchange of views.

1.2. Use of ‘negotiate’ in legislation

In evidence to CFP, a DFP official stated that:

“Negotiation” is a very specific term, and, in the context of employment law and in my experience, it is used solely to deal with pay. It is used to deal not with pension issues but with pay issues.³

RaISe was asked to identify any evidence in relation to this point. A search of the database of statutes returned 115 pieces of UK primary legislation in which ‘negotiate’ occurs – from the *Public Services (Social Value) Act 2012* back to the *Bills of Exchange (Scotland) Act 1772*.⁴

‘Negotiate’ occurs in a wide range of contexts, including:

- Arrangement of human tissue or organs for transplants;
- Surrogate pregnancy;
- Gambling;
- The terms of loans or other financial instruments and the settlement of debts;
- Consumer protection;
- The storage and transportation of gas;
- Divorce and separation;
- The Geneva Convention;
- Leases and other property-related transactions;
- Copyright and performance rights; and,
- The sale of livestock and the marketing of agricultural produce.

For the purposes of considering the Superannuation Bill, it appears unlikely that such statutory provisions are particularly relevant because they do not concern terms and conditions of employment.

² Hall, K L (2002) ‘The Oxford Companion to American Law’, Oxford University Press, available online at: <http://www.oxfordreference.com/views/ENTRY.html?entry=t122.e0643&srn=4&ssid=719318987&authstatuscode=202>

³ Official report, 4 July 2012, available online at: http://www.niassembly.gov.uk/Documents/Official-Reports/Finance_Personnel/Superannuation%20Bill%20%20DFP%20Briefing.pdf (accessed 24 July 2012) (see page 10)

⁴ Text search conducted on 23 July 2012 for ‘negotiate’ in all primary legislation. Secondary legislation was excluded from the search. Database is online at: www.legislation.gov.uk

It should be noted that it seems that none of the statutes directly applies a duty on a Minister or government department to negotiate with employees or their representatives. Legal advice would be required to confirm that this interpretation is correct.

Nevertheless, there are, however, some statutory provisions in which the use of 'negotiate' may be of interest to CFP, even in the absence of an apparent duty imposed on Ministers or government departments.. These are detailed in Table 1.

Table 1: use of 'negotiate' in employment-related contexts

Title of Legislation	Provision	Description	Comment/Relevance to the Superannuation Bill
Apprenticeships, Skills, Children and Learning Act 2009	Part 10, Chapter 4 (sections 227 to 241)	Established the School Support Staff Negotiating Body* as a statutory body and gives the Secretary of State powers to ratify agreements reached by it on school support staff pay and conditions. This Chapter also makes provision about the effect of ratifying an agreement.	The SSSNB not the Secretary of State is the body charged with negotiating. The authority for government is whether or not to ratify an agreement by others. Orders made to give effect to agreements are subject to annulment by resolution of either House of Parliament.
Legal Profession and Legal Aid (Scotland) Act	s.8 and 9	Provides a framework for the Scottish Legal Complaints Commission to handle consumer complaints about the service provided by legal practitioners which cannot be resolved at source.	s.8 provides that if the SLCC believes a practitioner has not attempted properly to reach a negotiated settlement with the complainer it can require the practitioner to make such an attempt – and the practitioner must set out in writing what steps have been taken.
Fire (Scotland) Act 2005	s.49 and 50	Enables the Scottish government to establish a statutory negotiating body for negotiating the terms and conditions of fire authorities' employees. In turn, the statutory body may permit local negotiation arrangements. Provides that any agreement on conditions is only legally enforceable if negotiated by the statutory body or locally. Also provides that the relevant negotiating body must have regard to guidance issued by the Scottish government.	Puts negotiation out of the direct hands of government ministers into a statutory body create for that purpose comprising both staff and management sides. Appears reminiscent of the Whitley arrangements for the NICS.
Fire and Rescue Services Act 2004	s.32 and 33	Equivalent provision to the Fire (Scotland) Act 2005, but applies to England and Wales	As above
Fire Services Act 2003	s.1	Allows the Secretary of State (DHSSPS in NI) to modify the terms of fire fighters' employment by Order. If there is a negotiating body in existence, the SoS must submit proposals to that body and allow at least 21 days for that body to consider the proposals and then take its report into consideration before making the Order.	The power to vary terms of employment is the Secretary of State's (or DHSSPS), subject to having taken into account the views of any negotiating body. The subsequent Order is then subject to negative resolution at Westminster or the Assembly
Employment Relations Act 1999	Schedule 1 3(3), 3(4) and 30(4)	Paragraphs 3(3) and 3(4) refer to negotiation in the context of collective bargaining and recognition of trades unions. 30(4) provides that a negotiating period is 30 days or such period as the parties may agree.	The wording of 30(4) may be helpful for constructing potential amendments should CFP decide that a minimum period for consultation or negotiation should be required.
Police Act 1996	s.61 and 62	Provides for the constitution and functions of the Police Negotiating Board for the UK. s.62(3) provides that before	Regulations relating to police terms and conditions, pay and pensions are subject to negative resolution

Title of Legislation	Provision	Description	Comment/Relevance to the Superannuation Bill
		regulations are made in relation to police pensions (under section 25 of the Police (Northern Ireland) Act 1998), the Board must be consulted.	
British Library Act 1972	Schedule para 13	Provides that persons employed by the British Library who were immediately prior to employment civil servants shall be employed on terms that are at least as favourable as the job they left	A rare example of 'negotiate' being used in connection with a requirement on a person or body to conduct the negotiation in such a way that the outcome is favourable to the employee.
Local Government (Northern Ireland) Act 1972	s.40	Establishes the Local Government Staff Commission for NI with the function of promoting or assisting with the establishment of mechanisms for negotiating standard rates of remuneration, terms and conditions between councils and their employees.	The Staff Commission can make recommendations to councils. If the councils do not comply, the DOE may direct those councils to comply, having taken into account any recommendations they might make to it.

* **Note.** The School Support Staff Negotiating Body has subsequently been abolished by the UK Government in the *Education Act 2011*.

1.3. A duty to negotiate? Issues for consideration

There is an apparent absence of any statutes that impose a duty on a Minister or department to negotiate. This suggests that the introduction of such a duty by amendment of the Bill would be a novel approach.. Legal advice is required to confirm this finding, and to enumerate whether challenges or potential problems might arise in association with such a duty. Potential problems that occur include the questions: what happens if negotiations fail? Would the department be forced into arbitration? Could this mean, in effect, a trade union 'veto' by the back door?

1.4. Negotiations in GB on the replacement compensation scheme

To further inform CFP's consideration of possible amendments, this section of the paper provides detail on the negotiations undertaken by the UK Government with trades unions when introducing the scheme which DFP will seek to replicate, subject to passage of the Bill.

In evidence on 4 July, a DFP official stated:

In the detailed meetings and engagement that went on with the unions in GB, a number of options were looked at. Those are set out in the legal judgement, which found against the unions and for the Government. Some of that detail is contained therein. The options that were looked at included having a protected period and at a phasing-in period.⁵

The referenced legal judgment appears to concern a the legal challenge to the new GB scheme. In the judgment, Mr Justice McCombe noted that initial proposals for transitional arrangements but were rejected on affordability grounds. This seems to accord with the official's reference to options being set out in the judgment. The Judge continued:

In late September 2010, other proposals were presented to the unions which included transitional arrangements for up to 5 years, giving continued access to Old Scheme benefits for a proportion of staff or up to a defined proportion of the value of compensation.⁶

No such transitional arrangements appeared in the Scheme which is now in place in GB. The judgment does also refers to consideration of a 'payments cap'. It appears that this would have limited payments under the scheme for the higher-end earners in order to provide better compensation for lower-paid workers – which the UK Government argued was a 'legitimate aim'.

⁵Official report, 4 July 2012, available online at: http://www.niassembly.gov.uk/Documents/Official-Reports/Finance_Personnel/Superannuation%20Bill%20%20DFP%20Briefing.pdf (accessed 24 July 2012) (see page 9)

⁶Case No: CO/2014/2011 between the Minister and the PCS union. 10 August 2011 (paragraph 55)

Having considered these options, Mr Justice McCombe reached the conclusion that:

In my judgment, reduction in benefits was “reasonable and commensurate” and the interference with A1P1 rights did not go beyond what was “reasonably necessary” to achieve the legitimate aim recognised on both sides of this case.⁷

Finally on this issue, he stated:

In my judgment, it seems clear that the Defendant and the Treasury endeavoured to make sensible calculations of prospective costs of the Old Scheme and of possible alternative solutions. The detailed spreadsheets produced at the time and disclosed pursuant to the court’s order demonstrate this.⁸

1.5. Minimum periods for consultation

One further alternative that CFP has considered - instead of introducing a requirement for DFP to negotiate - is to strengthen the consultation requirements. Examples of statutes that impose particular requirements in relation to consultation were detailed in section 4 of RaISe Research Paper [69/12](#).

In the course of preparing this paper, an additional statutory provision has been identified that might have some bearing on CFP’s consideration of potential amendments to the Bill.

1.5.1. The Occupational and Personal Pension Schemes (Consultation by Employers) Regulations (Northern Ireland) 2006

Under powers conferred by *The Pensions (Northern Ireland) Order 2005*⁹ the Department for Social Development laid *The Occupational and Personal Pension Schemes (Consultation by Employers) Regulations (Northern Ireland) 2006*. These regulations prohibit the changing of certain conditions of occupational and personal pension schemes by employers unless consultation, as specified, has taken place beforehand. The consultation has a minimum time period of 60 days.

Regulation 15(4) states that:

An appropriate period must be allowed for carrying out the consultation which in any event must not be less than 60 days.¹⁰

⁷Case No: CO/2014/2011 between the Minister and the PCS union. 10 August 2011 (paragraph 62)

⁸Case No: CO/2014/2011 between the Minister and the PCS union. 10 August 2011 (paragraph 63)

⁹ *The Pensions (Northern Ireland) Order 2005*, art 238(2)(a) allows the Department to specify the time to be allowed for consultation. <http://www.legislation.gov.uk/nisi/2005/255/contents>

¹⁰ *The Occupational and Personal Pension Schemes (Consultation by Employers) Regulations (Northern Ireland) 2006* <http://www.legislation.gov.uk/nisr/2006/48/regulation/15/made>

Furthermore, regulations 15(3) and 15(5) add that all members to be consulted must be informed of the end date for written responses, and that if no responses are received by this date the consultation is to be regarded as complete.

The relevant employers bound by these regulations are those who run occupational pension schemes, personal pensions schemes, including employers, trustees and managers and anyone else able to make changes to the schemes, or employers who pay contributions to employees' personal pension schemes.¹¹ Public service pension scheme employers are excluded under regulation 4(1)(a).¹²

Whilst this requirement specifically *excludes* providers of public sector pension schemes, in seeking to ensure DFP is required to consult for a minimum period, CFP may wish to rely on these Regulations as a useful model.

1.6. A minimum period for consultation? Issues for consideration

Members may wish to consider whether inclusion of a minimum period for consultation in the Bill would provide a satisfactory safeguard for NICSC Scheme members in place of the trade union veto in the existing legislation. Such consideration may be subject to consideration of amendments in relation to a duty to negotiate. CFP might consider whether **both** amendment of the Bill to require negotiation **and** to require a minimum period for consultation is necessary – a negotiation duty may make any need for a specified consultation period redundant.

On the other hand, given potential problems arising from a statutory negotiation duty (subject to any legal advice CFP may seek), the addition of a minimum period as an alternative might arguably provide extra assurance to Members.

¹¹ *The Occupational and Personal Pension Schemes (Consultation by Employers) Regulations (Northern Ireland) 2006* <http://www.legislation.gov.uk/nisr/2006/48/regulation/3/made>

¹² *The Occupational and Personal Pension Schemes (Consultation by Employers) Regulations (Northern Ireland) 2006* <http://www.legislation.gov.uk/nisr/2006/48/regulation/4/made> Also lists other employers who are excluded for the purposes of these regulations (e.g. any employer employing fewer than 50 employees).

2. Assembly procedure

This section of the paper provides further evidence in relation to the legislative procedure for amendments to the NICSC Scheme.

2.1. Current legislative procedure

Under Article 3 of the *Superannuation (Northern Ireland) Order 1972* (the 1972 Order), DFP may make and administer schemes to provide for pensions, allowances or gratuities for civil servants.

Article 4(8) of the 1972 Order states that:

*Before a scheme made under Article 3, being the principal civil service pension scheme or a scheme amending or revoking that scheme, comes into operation the Ministry shall lay a copy of the scheme before Parliament.*¹³

Under this procedural mechanism, the Assembly is not required to vote to approve an NICSC Scheme, nor can it vote to annul.

It was noted in CFP's meeting of 4 July 2012 that this procedure differs from those for other Schemes made under the 1972 Order.¹⁴ The 1972 Order also provides powers for various NICS Departments to make regulations providing pensions, allowances or gratuities for persons employed by local government, teachers and health service staff. Article 14(5) provides that in each instance, regulations are to be made subject to the negative resolution¹⁵ procedure in the Assembly.¹⁶

2.2. Background to the current procedure

In evidence on 4 July 2012, a DFP official stated that the Department would not be willing to amend the Bill to provide a role for the Assembly beyond the current arrangement whereby an NICSC Scheme must be laid before it. She stated that DFP believes "the current arrangements are satisfactory."¹⁷

There are a number of different elements relating to the Superannuation Act 1972¹⁸ (the 1972 Act) which Members may wish to consider when deciding whether CFP agrees that the arrangements are satisfactory, and these are detailed below.

¹³ <http://www.legislation.gov.uk/nisi/1972/1073/article/4>

¹⁴ See Official Report, 4 July 2012, available online at: http://www.niassembly.gov.uk/Documents/Official-Reports/Finance_Personnel/Superannuation%20Bill%20%20DFP%20Briefing.pdf (accessed 30 July 2012)(pages 6-7)

¹⁵ The 'negative resolution' procedure means that regulations take effect automatically after a certain date unless specifically annulled by resolution of the Assembly.

¹⁶ <http://www.legislation.gov.uk/nisi/1972/1073/article/14>

¹⁷ Official Report, 4 July 2012, available online at: http://www.niassembly.gov.uk/Documents/Official-Reports/Finance_Personnel/Superannuation%20Bill%20%20DFP%20Briefing.pdf (accessed 30 July 2012) (page 7)

¹⁸ <http://www.legislation.gov.uk/ukpga/1972/11/contents>

2.2.1. Arrangements for Home Civil Service superannuation prior to 1972

The 1972 Act made significant changes to the way superannuation was handled for the Home Civil Service – and it was replicated in Northern Ireland through the 1972 Order.

Before the 1972 Act came into force, changes to public service pensions schemes required **primary legislation**. The Parliamentary Secretary to the Civil Service Department at the time, Mr David Howell, in moving the legislation at second reading, noted that:

As life and Government become more complex, and as the pressures upon Parliament grow more intense, it just does not make sense that parliamentary time should be taken up by the passage of Bills designed to change public service pension schemes. It is now an anachronism that this condition of service alone should be enshrined in many cases in primary legislation. It helps to underline this to point out that Civil Service pensions, costing some £100 million per annum, are controlled in detail by Act of Parliament, while Civil Service pay, costing some 13 times as much, is not.¹⁹

The 1972 Act removed the requirement to enact primary legislation for civil service pensions. At the same time, the original parliamentary control for health service pensions was changed from requiring affirmative resolution in each House of Parliament to becoming subject to annulment by a resolution of either House – equivalent to the Assembly's negative resolution procedure.

Mr Howell went on to give reasons for the 1972 Act applying different controls for civil service schemes from those for other public services:

I would not pretend that the circumstances of the Civil Service scheme and the circumstances of these other schemes can be distinguished as black from white—far from it—but there are two main reasons for not following precisely the pattern proposed for the Civil Service. First, and a very good reason, this is what the managers of the schemes themselves want and what the staff in every case, I understand, either want or are ready to accept. Second, what essentially distinguishes the other public services from the Civil Service here is that they either have a multiplicity of employers or a multiplicity of staff interests. I hope that I shall not be misunderstood if I say that the Civil Service is in these respects more monolithic, and this makes life a good deal simpler when administering a pension scheme. The need for uniformity and rather more formality makes

¹⁹ House of Commons Official Report, 19 November 1971, available online at: http://hansard.millbanksystems.com/commons/1971/nov/19/superannuation-bill#S5CV0826P0_19711119_HOC_8 (accessed 30 July 2012) (see page 4)

*a greater degree of parliamentary oversight desirable for the other public services.*²⁰

In the second reading of the Bill in the House of Lords, Earl Jellicoe described the aims of the Bill as to:

*Provide timely powers with which to carry through changes promptly, efficiently and with due regard both to the appropriate degree of Parliamentary involvement and to the interests of staff representatives.*²¹

These statements explain that pressure on parliamentary timetable was one reason for reducing the level of control over the superannuation arrangements for the public sector. It may be arguable, however, that the circumstances in the Northern Ireland Assembly are somewhat different from Westminster – the legislative calendar in the Assembly is generally not as short of time as at the UK level.

In addition, another argument was advanced. In the Commons, Mr Douglas Houghton (an opposition MP) noted that:

*Another welcome feature of the Bill is the obligation to have consultation with staff interests. It is made obligatory, and this is very important. Though there has been no complaint over the years by the Staff Side about lack of consultation by the official side on superannuation matters, **it has been a nuisance when we have been told that we have to reach informal agreements which are subject to Ministerial and finally parliamentary consent and then the matter will be at the hazard of the Government's legislative programme.***²²[emphasis added]

This point might suggest an advantage of not making the NICSC Scheme subject to an Assembly procedural mechanism. Could it potentially be unhelpful to negotiators on both staff and management side to know that - following a process of consultation and engagement - the new NICSC Scheme might nevertheless be overturned by a vote?

On the other hand, if the purpose of greater Assembly control is to ensure that the consultation process is properly conducted it may be viewed as a safeguard, given that the democratically elected Assembly has ultimate authority over the use of public funds. In addition, the absence on parliamentary control in the early 1970s was in the context of the trades unions effectively being given a 'veto' over detrimental changes.

²⁰ House of Commons Official Report, 19 November 1971, available online at: http://hansard.millbanksystems.com/commons/1971/nov/19/superannuation-bill#S5CV0826P0_19711119_HOC_8 (accessed 30 July 2012) (see page 5)

²¹ House of Lords Official Report, 20 January 1972, available online at: <http://hansard.millbanksystems.com/lords/1972/jan/20/superannuation-bill> (accessed 30 July 2012) (see page 5)

²² House of Commons Official Report, 19 November 1971, available online at: http://hansard.millbanksystems.com/commons/1971/nov/19/superannuation-bill#S5CV0826P0_19711119_HOC_8 (accessed 30 July 2012) (see page 7)

2.2.2. The ethos behind the 1972 Act

In evidence, the DFP official stated that:

We have done some research on why the 1972 Act was constituted as it was. It was set up that way following a joint committee that was formed as a subcommittee of the National Whitley Council back in 1968. Those arrangements were put in place with the agreement of the unions, and it was referred to earlier in the unions' submission that those arrangements have been in place for some time.

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

As a departmental official, I contend that the ethos behind the 1972 Act is still intact; in fact; one of the key tenets is actually being strengthened, because consultation with the union is being more exposed to Members by the fact that a report is going to be laid in the Assembly. It could be subject to whatever scrutiny Members wish to give it, and that is something that, I know, officials will not take lightly. Therefore, the Department would not be willing to propose such an amendment.²³

On the basis of the debates in Westminster at the time, it appears reasonable to argue that the ethos behind the 1972 Act **was that of genuine consultation**. Speaking during the passage of the Bill through the Lords in January 1972, Earl Jellicoe stated:

...the Government are both willing and able to give the assurance that the obligation to consult will be honoured in the spirit, not only in the letter: Consultation will be what it says: it will be real and meaningful.²⁴

In relation to the current Bill, DFP officials have consistently maintained in evidence to CFP that it is their intention that consultation fully on changes to the NICSC Scheme:

²³ Official Report, 4 July 2012, available online at: http://www.niassembly.gov.uk/Documents/Official-Reports/Finance_Personnel/Superannuation%20Bill%20%20DFP%20Briefing.pdf (accessed 30 July 2012) (page 7)

²⁴ House of Lords Official Report, 20 January 1972, available online at: <http://hansard.millbanksystems.com/lords/1972/jan/20/superannuation-bill> (accessed 30 July 2012) (see page 3)

My colleagues on management side and my colleagues on trade union side spend a lot of time and effort, whatever the issue, to try genuinely to ensure a meeting of minds. We do that in a very honest and open way and invest a lot of time, commitment and effort into doing that to ensure the best deal that we can.²⁵

Of course, it may be noted that DFP's intention will be informed by the prevailing socioeconomic and political context within which the Superannuation Bill has been brought forward. This context is different from that in 1972, as detailed in the next section.

2.2.3. The wider context for the 1972 Act

The 1972 Act was passed at a time when superannuation benefits for civil servants were being **enhanced and improved**. These improvements were listed in the Lords as including:²⁶

- The overhaul and improvement of injury benefits, including the extension of the injury scheme to manual workers, more liberal conditions of eligibility and improvements to the benefits themselves;
- Ill health retirement pension enhancement extended to the generality of staff not just those who had between 10 and 20 years' service;
- Widows' pensions increased from one third to one half of deceased officers' entitlement; and,
- Children's benefits increased – for example, a widow with two children would receive double the previous payment.

Other improvements were listed in the Commons:²⁷

- The right to a preserved and transferrable accrued pension on changing jobs in the civil service; and,
- The reduction of the qualifying period for pension from 10 to five years.

It was also the Government's explicit intention that civil service pensions would be exemplars of good provision that the private sector would follow. For example, in the Commons, Mr Howell, the Government Minister said:

...when the Bill has become law, and when the powers in it have been used to implement the results of the reviews, public service superannuation should have taken on overall an up-to-date and streamlined look, and the

²⁵ Official Report, 4 July 2012, available online at: http://www.niassembly.gov.uk/Documents/Official-Reports/Finance_Personnel/Superannuation%20Bill%20%20DFP%20Briefing.pdf (accessed 30 July 2012) (page 10)

²⁶ see House of Lords Official Report, 20 January 1972, available online at: <http://hansard.millbanksystems.com/lords/1972/jan/20/superannuation-bill> (accessed 30 July 2012) (see page 4)

²⁷ House of Commons Official Report, 19 November 1971, available online at: http://hansard.millbanksystems.com/commons/1971/nov/19/superannuation-bill#S5CV0826P0_19711119_HOC_8 (accessed 30 July 2012) (see page 3)

*public services, as so often in the past, will again be setting a good example in this field to other employers.*²⁸

This point was also emphasised in the Lords by Earl Jellicoe:

*...the Government intend to set an example both as an employer in the Civil Service and National Health Service and as the coordinator of the other public service pension schemes.*²⁹

2.2.4. The current context

The Superannuation Bill now before the Assembly is a product of a different era. Public expenditure is under great scrutiny and budgets are being tightened due to continuing economic difficulties. Moreover, it is the explicit intention of DFP that the Bill will allow the **benefits under the current NICSC Scheme to be reduced**. The Explanatory and Financial Memorandum accompanying the Bill states:

*The Bill will enable the Department of Finance and Personnel to reduce the amount of compensation payable to Northern Ireland Civil Service staff exiting on redundancy.*³⁰

The explanation for this change is the intention of the Executive to maintain parity with the equivalent scheme for home civil servants: the compensation scheme for Home Civil Servants has already been made less generous.³¹ A letter to the Prime Minister from the Minister for the Civil Service (Francis Maude) explains the UK Government's reasoning behind the reduction in benefits, which in the Minister's view were:

*...way out of kilter both with the wider public sector and with the private sector. As a result there are very many surplus staff within the civil service who are being paid to do nothing because this is cheaper than making them redundant.*³²

Another significant consideration is demographic change over the last four decades. Life expectation has increased for both males and females – see Table 2. As people live longer the cost of pensions provision (including top-up enhancements on retirement on medical grounds etc.) increases.

²⁸ House of Commons Official Report, 19 November 1971, available online at:

http://hansard.millbanksystems.com/commons/1971/nov/19/superannuation-bill#S5CV0826P0_19711119_HOC_8 (accessed 30 July 2012) (see page 5)

²⁹ see House of Lords Official Report, 20 January 1972, available online at:

<http://hansard.millbanksystems.com/lords/1972/jan/20/superannuation-bill> (accessed 30 July 2012) (see page 1)

³⁰ Explanatory and Financial memorandum to the Superannuation Bill, available online at:

http://www.niassembly.gov.uk/Documents/Legislation/Bills/Executive%20Bills/Session-2011-12/supperanuation_efm.pdf (accessed 31 July 2012) (see page 4)

³¹The broad issue of parity was discussed in some detail in section 4 of RalSe Bill Paper [59-12](#)

³² Letter quoted in the judgment of Mr Justice McCombe in Case No: CO/2014/2011 between the Minister and the PCS union. 10 August 2011

Table 2: UK life expectation at birth in 1972, 1994 and 2009³³

	1972	1994	2009	Difference 2009 on 1972
Males	68.8	74.1	78.1	+9.3 years
Females	75.1	79.3	82.1	+7 years

2.3. Change to the current procedure? Issues for consideration

On 4 July 2012, CFP agreed that a draft amendment to the Bill should be prepared by staff. One possibility is to amend the Bill so that changes to the NICSC Scheme would be by the negative resolution procedure in the Assembly. This would mean that rather than DFP simply **making** an amendment and **laying** it before the Assembly, there would be the opportunity for MLAs individually or CFP collectively to ‘pray against’³⁴ the legislative instrument. This would align the Assembly procedure for the NICSC Scheme with the other public service schemes under the 1972 Order.

It might be argued that this procedure would be a form of balancing measure following the removal by Clause 1 of the Bill of the trade union veto. It could allow for a safeguard in the event that CFP of the wider Assembly is concerned that the consultation process was flawed and/or agreement had not been reached. There would be an opportunity when CFP is considering the subordinate legislation for trades unions or other interested parties to make representations.

On the other hand, it may be that the introduction of an Assembly procedural mechanism to changes to the NICSC Scheme gratuities would introduce uncertainty that might not be welcomed by one or other, or indeed, neither, party – staff side of management. Having said that, it is also arguable that because of the numbers of staff potentially affected by reductions or enhancements (and the associated impact on public finances) it is in the public interest for the Assembly to have a greater degree of oversight of amendments to the NICSC Scheme.

CFP may also wish to consider whether the change in wider context from the early 1970s has a significant bearing on its decisions in relation to any potential amendment to the Bill: does the intention to *reduce* benefits rather than *enhance* them mean that an Assembly control is appropriate in the current context? Conversely, it may also be arguable that greater Assembly control is more necessary if benefits were to be enhanced, given a potential risk for self-interest for management side.

Finally, CFP may wish to bear in mind that a NIPSA official stated in evidence in relation to Assembly procedure that:

³³ Source: ONS health data, available online at: <http://www.ons.gov.uk/ons/rel/social-trends-rd/social-trends/social-trends-41/health-data.xls> (accessed 8 August 2012)

³⁴ This is the mechanism by which a statutory rule might be subjected to annulment under the negative resolution procedure.

*...if there was some Committee scrutiny and some Assembly influence over it, I would not be overly confident that anything other than what DFP wanted would go through.*³⁵

Having noted that the unions' position was that preferably the legislation should not be changed, another trade union witness stated that:

*...if there were to be a change in legislation, there should be some sort of overseeing provision or accountability to DFP and the Assembly as a fallback position.*³⁶

³⁵ Official report, 27 March 2012, available online at: http://www.niassembly.gov.uk/Documents/Official-Reports/Finance_Personnel/Superannuation%20Bill%20Trade%20Union%20Briefing.pdf (accessed 31 July 2012) (see page 6)

³⁶ Official report, 27 March 2012, available online at: http://www.niassembly.gov.uk/Documents/Official-Reports/Finance_Personnel/Superannuation%20Bill%20Trade%20Union%20Briefing.pdf (accessed 31 July 2012) (see page 7)

3. Parity in Northern Ireland public sector pensions

There are a number of public sector pension schemes in Northern Ireland for persons employed in the education and health sectors, local government and the police. This section of the paper presents information returned to RalSe by the departments responsible for the various schemes in relation to parity of provision with GB.

This information has been sought because it forms part of the wider context for the Bill. In the case of superannuation for civil servants, the Northern Ireland Executive's policy has been to pursue a policy of parity. This section shows that in the case of some public sector schemes, strict parity has not always been pursued.

3.1. The Principal Civil Service Pension Scheme

DFP has provided the following response:

Following consultation with the Departmental Solicitor's Office I can confirm there is no divergence between the Superannuation Act 1972 which applies in Great Britain and the Superannuation (NI) Order 1972 which, as you know, applies in Northern Ireland. Similarly there is no difference between the contributions and the benefits given under the civil service pension schemes of Great Britain and Northern Ireland.

While there is a current divergence in the provisions of the Civil Service Compensation Scheme (Northern Ireland) from the equivalent scheme which operates in Great Britain, it is the intention of the Department of Finance and Personnel to amend the rules of the Northern Ireland scheme to restore parity with the Great Britain scheme when the currently proposed Superannuation Bill becomes law.

Policy has never dictated a divergence from parity in relation to the Northern Ireland Civil Service pensions or compensation arrangements. By way of example, the Department of Finance and Personnel has brought 39 amendments to the Northern Ireland Civil Service pension and compensation arrangements since 2005 and the purpose of each has been to replicate in the Northern Ireland schemes amendments already made to the Great Britain equivalents without exception.³⁷

3.2. Northern Ireland Teachers' Pension Scheme (NITPS)

The Department of Education has provided the following response:

The provisions of NITPS, in the main, follow the principle of parity with the equivalent schemes in Scotland and in England & Wales. There are some minor differences brought about as a result of delays in implementing

³⁷ Source: communication from DFP official

*changes made in England & Wales, it is intended to bring the NITPS into line in due course. The only significant difference in the schemes, which we do not intend to bring into line with the other schemes, is in relation to the re-employment of retired teachers. In NITPS retired teachers who are re-employed cannot contribute to the pension scheme, whereas in Scotland and in England & Wales such teachers can contribute to the scheme.*³⁸

3.3. Criminal Justice

The Department of Justice has advised that:

...there is no legislative divergence from the principle of parity in respect of DOJ staff in the Core Department, Agencies or [Arms-length Bodies].

The Department also noted that:

*...there are a few equivalent bodies in England & Wales and NI e.g. the police. A number of our ALBs e.g. Office of the Police Ombudsman NI (OPONI), Police Rehabilitation & Retraining Trust (PRRT), Northern Ireland Police Federation (NIPF) etc, don't have full equivalents, so nothing can be deduced from the difference between pension provision in those bodies.*³⁹

3.4. Health and Social Care (HSC)

The Department for Health, Social Services and Public Safety has advised that:

*...there is no legislative divergence from the principle of parity in relation to the HSC Pension Scheme or superannuation provision. Pension provision for HSC staff in NI is equivalent to the pension provision provided to NHS staff in England, Wales and Scotland.*⁴⁰

3.5. Local Government Pension Scheme

The Department of the Environment provided the following response, reproduced as Table 3 below.

³⁸ Source: communication from DE official

³⁹ Source: communication from DoJ official

⁴⁰ Source: communication from DHSSPS official

Table 3: Comparison Local Government Pension Scheme (Northern Ireland) and the Local Government Pension Scheme (England & Wales) and the Local Government Pension Scheme (Scotland)

	England & Wales	Northern Ireland	Scotland
Vesting period (i.e. the period of service when members can get a refund on their contributions if they leave the scheme instead of having a small deferred pension in the scheme until retirement.)	3 months	3 months	2 years
Member contribution rate	Ranges from 5.5% to 7.5% according to which of the 7 salary bands the full-time equivalent salary falls into.	Same as England & Wales	Contribution rate derived from applying 5 contribution tiers (from 5.5% to 12%) to full-time equivalent salary.
Ill – Health	<p>Minimum membership of 3 months for enhanced ill-health benefits.</p> <p>3 tier arrangement.</p> <p>Tier 1 – if there is no reasonable prospect of the person undertaking gainful employment before normal retirement age (age 65), benefits are increased as if the member had retired at normal retirement age.</p> <p>Tier 2 – if there is a reasonable prospect that the person will be able to undertake gainful employment before normal retirement age, his benefits are increased by adding to his total membership at the date of ill-health retirement, 25% of the period between that date and the date on which he would have retired at normal retirement age (65).</p> <p>Tier 3 – if there is a reasonable prospect of the person being able to undertake gainful employment within 3 years, he may receive his pension with no actuarial reduction for</p>	<p>Minimum membership of one year for enhanced ill-health benefits.</p> <p>2 tier arrangement.</p> <p>Tiers 1 and 2 same as for England and Wales.</p>	<p>Minimum membership of 2 years for enhanced benefits.</p> <p>2 tier arrangement.</p> <p>Tiers 1 and 2 same as for England and Wales.</p>

	England & Wales	Northern Ireland	Scotland
<p>III – Health contd</p>	<p>early payment (i.e. payment before normal retirement age). Payment of benefits stops if the person takes up employment or after a maximum of 3 years.</p> <p>The decision to award an ill-health retirement is taken by the employer after consideration of the opinion of an independent registered medical practitioner.</p>	<p>The decision to award an ill-health retirement is taken by the Northern Ireland Local Government Officers' Superannuation Committee after consideration of the opinion of an independent registered medical practitioner.</p>	<p>The decision to award an ill-health retirement is taken by the employer after consideration of the opinion of an independent registered medical practitioner.</p> <p>Separately from the provisions of the Local Government Pension Scheme (Scotland) an employer can determine that a discretionary payment of an ill-health gratuity should be paid to an employee whose employment is terminated on the grounds of ill-health. The maximum ill-health gratuity payable to an employee is one week's pay for each whole year of employment with that employer up to a maximum of 30 weeks.</p> <p>This discretion is set out in the Local Government (Discretionary Payments and Injury Benefits) (Scotland) Regulations 1998.</p>

	England & Wales	Northern Ireland	Scotland
Early Leavers: Business Efficiency and Redundancy	<p>If aged 55 or over, immediate payment of retirement pension without actuarial reduction.</p> <p>Employer may increase the members' total membership by up to 10 years and/or award additional pension of up to £5,000 per year.</p>	Same as England & Wales	Same as England & Wales except members of the scheme on 5 April 2006 can receive immediate payment of retirement pension from age 50.
Protections for members before 1 October 2006 from the removal of the 85 year rule. 85 year rule allowed members to retire early without actuarial reduction to the pension provided that their service plus age equalled 85.	<p>Full protection up to 31 March 2016.</p> <p>Tapering protection from 1 April 2016 to 31 March 2020.</p>	Same as England & Wales	For members before 1 December 2006, full protection up to 31 March 2020.
Employer's liabilities when leaving the pension scheme	Valuation of the pension assets and liabilities is required when a community admission body or transferee admission body is leaving the scheme.	<p>Requirement for a valuation on leaving the scheme applies to all employers.</p> <p>Northern Ireland has unique provisions which allow any deficit, normally paid on an employer leaving the scheme, to be suspended for an agreed period. The employer continues to make the required employer contribution during the period of suspension.</p> <p>The regulations also allow liabilities to be apportioned amongst bodies. This was introduced as a response to the changes planned under the Review of Public Administration. It avoids a cessation payment having to be made when one (or more bodies) is being wound up but the successor body is joining the pension scheme.</p>	Same as England & Wales

Early Termination of Employment – Discretionary Compensation Arrangements

(NOTE: These also apply to employees who are eligible to be members of the Local Government Pension Scheme as well as members.)

	England & Wales	Northern Ireland	Scotland
Termination of employment on grounds of business efficiency or redundancy.	<p>Allows employers to increase the statutory redundancy payments as if there was no limit on amount of a week's pay used in the calculation.</p> <p>Also gives employers the discretion to pay up to 104 weeks pay (including statutory redundancy if applicable).</p>	Same as for England & Wales	<p>Similar provision to increase statutory redundancy payments.</p> <p>Subject to conditions, the employers can grant a credited period of up to 10 years to employers aged 55 or over. For employee who was a member of the Local Government Pension Scheme (Scotland) on 5 April 2006, the minimum age is 50. Payment is made in the form of a lumps sum (where applicable) and an annual amount.</p>

4. Concluding remarks

In summary, this paper has raised a number of issues for consideration in relation to possible amendments to the Bill:

- Whether altering the Assembly procedure for changes to the NICSC Scheme would bring statutory provision for superannuation for civil servants more closely into line with that of other public sector schemes without introducing unwelcome uncertainty into DFP's consultation/negotiation;
- Whether the change in the wider context for the Bill from that which existed in the early 1970s is significant in deciding the appropriate Assembly procedure;
- Whether amending the Bill to require DFP to negotiate has the potential to create unforeseen difficulties; and,
- Whether a minimum period for consultation might provide a suitable alternative assurance.

The information presented in section 3 of the paper provides additional context in relation to the concept of 'parity'. While it seems that other public sector pensions schemes are broadly on terms with equivalents in GB, it appears that it has been possible to depart from strict parity on occasion in the past.