



Northern Ireland
Assembly

Committee for Employment and Learning

OFFICIAL REPORT (Hansard)

Pension Schemes Bill Legislative Consent Motion:
DEL and DOJ Officials

19 November 2014

NORTHERN IRELAND ASSEMBLY

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Members present for all or part of the proceedings:

Mr Robin Swann (Chairperson)
Mr Thomas Buchanan (Deputy Chairperson)
Mr David Hilditch
Ms Anna Lo
Mr Fra McCann
Mr Pat Ramsey
Mr Alastair Ross

Witnesses:

Mr Tom Evans	Department for Employment and Learning
Mrs Geraldine Lavery	Department for Employment and Learning
Ms Jo Wilson	Department of Justice

The Chairperson (Mr Swann): Tom, you have stayed on from the previous session, so I need welcome only Mrs Jo Wilson from the civil justice policy and legislation division in the Department of Justice; and Mrs Geraldine Lavery from employment relations policy and legislation in the Department for Employment and Learning (DEL). Will five minutes or so do, Tom?

Mr Tom Evans (Department for Employment and Learning): OK, Chairman, I will run through this fairly quickly. I want to give the background to why the Minister is seeking to advance a legislative consent motion in relation to the Pension Schemes Bill of 2014. Jo, Geraldine and I are happy to answer questions — I will be happy for them to answer questions.

The purpose of the motion is to ensure that we are able to provide a pension to all eligible fee-paid judicial office holders in Northern Ireland. The issue has arisen because of a Supreme Court decision in a case known as O'Brien v Ministry of Justice. The effect of this judgement is that all eligible — it is important to stress "eligible" — fee-paid judicial office holders are now entitled to a pension. Following its decision, the Supreme Court referred the matter to an employment tribunal to determine the detail of the pension entitlements that would be available. Corresponding litigation is ongoing in Northern Ireland. However, the Department has already accepted that its fee-paid judicial office holders have full-time comparison. There are salaried judicial chairpersons on the employment tribunals, and they are fee-paid. We really could not be in a position to advance litigation and deny that.

Therefore, the Department now feels that it is important to establish pension arrangements for eligible fee-paid office holders. However, it has not been possible simply to permit fee-paid judicial office holders to join the existing schemes: when the current UK-wide pension provision for salaried judges was established by the Judicial Pensions and Retirement Act 1993, it was not anticipated that fee-paid judicial office holders would have that right, so they cannot simply be included in the schedule. The

creation of a new pension scheme from 2015 on, as part of the wider public pensions developments, will address the problem going forward, but retrospective action is needed to provide a remedy for judicial office holders who are fee-paid and have missed out on pension entitlements from 2000, when the part-time workers directive came into effect. That was the governing legislation on which O'Brien based his successful claim.

Around August 2014, the Ministry of Justice (MOJ) in GB indicated its intention to amend the 1993 Act to provide for a remedy scheme for eligible fee-paid judicial office holders. The MOJ has already introduced Government amendments to the Pension Schemes Bill currently before Parliament to establish pension arrangements for fee-paid judicial office holders. Without legislative consent, the amendment to the scheme will not apply to the fee-paid people in Northern Ireland. That is because there is an added complication in Northern Ireland: there are two types of fee-paid judicial office holders here, devolved and excepted. I am getting very technical, Chair, but I have to be. The devolved judiciary are those in Northern Ireland who fall within the responsibility of Northern Ireland Departments, and they are relatively few in number. They sit on tribunals and fall within the responsibility of the Department for Employment and Learning, the Department for Social Development and the Department of Justice. In DEL, the devolved fee-paid judicial office holders are those on industrial tribunals and fair employment tribunals.

The Ministry of Justice is responsible for the excepted judiciary in Northern Ireland. That means that, once the MOJ implements the scheme, any eligible excepted fee-paid office holders, who will normally be within the courts judiciary, will have this available to them. Without the legislative consent motion, the devolved fee-paid judiciary will not have access to the same provisions. Separate legislation could be taken forward in Northern Ireland, but, given the small number and the timescale involved, that was deemed disproportionate. The Minister decided that it would be better to row in with the UK-wide legislation, given that the current governing legislation is UK-wide.

In summary, the Department has accepted that these people are entitled, and the legislative consent motion will allow them to avail themselves of the same pension arrangements as people within the courts in Northern Ireland and right across the UK. The scheme will apply to fee-paid service from 7 April 2000 to 31 March 2015, so it is a remedy scheme to cover that interregnum period. I will stop there.

The Chairperson (Mr Swann): Tom, you mentioned a small number. How many?

Mrs Geraldine Lavery (Department for Employment and Learning): From a DEL perspective, 13 would be affected by access or potential access to any remedy scheme created. The other litigation is less progressed, so I am not in a position to say how many, but Jo might be.

Ms Jo Wilson (Department of Justice): From a Department of Justice perspective, one office holder would be affected, if that office holder is found to be eligible.

The Chairperson (Mr Swann): What would be the cost to the Department, or to whoever would bear it?

Mrs Lavery: At this stage, because the litigation is ongoing, the exact financial implications of providing a pension scheme to all eligible fee-paid judicial office holders have yet to be fully quantified, but officials across all three Departments that may be affected are liaising with the Government Actuary's Department to ensure that each Department has appropriate provision in place when the scheme comes into effect.

The Chairperson (Mr Swann): So there will be cover. Among our correspondence is a letter telling us that the draft Judicial Pensions Regulations (Northern Ireland) 2015, with transition and consequential amendments, is coming through. Is there any clarification on exactly how that relates to —

Ms J Wilson: That is, in fact, separate. It relates to the pension reforms in the Public Service Pensions Act (Northern Ireland) 2014 and provides for a career average scheme. To comply with the O'Brien litigation, we need to provide a final salary scheme on equivalent terms to those provided to salaried judges. We could not use that legislation to provide an equivalent pension scheme.

The Chairperson (Mr Swann): Will this provide an average or final earnings scheme?

Ms J Wilson: The new scheme will provide for a career average scheme, but the one that we need to provide to comply with the judgement will be a final salary scheme.

The Chairperson (Mr Swann): So, retrospectively, it will be a final salary scheme. Members do not have any questions. Thank you.