

FROM THE MINISTER



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Our Ref: SUB-476-14

25 September 2014

Dear *Robin*

LEGISLATIVE CONSENT MOTION – PENSION SCHEMES BILL: PROVISION REGARDING FEE-PAID JUDICIAL OFFICE HOLDERS

1. I am writing to apprise the Committee of important developments in relation to judicial pension arrangements arising from the UK Supreme Court's decision in the case of *O'Brien -v- Ministry of Justice*.
2. In the *O'Brien* case, which dealt with the interpretation and application of the Part-Time Workers Directive, the UK Supreme Court held that fee-paid judicial office holders are entitled to a pension on terms equivalent to those enjoyed by their salaried counterparts.
3. Following its decision, the Supreme Court referred the matter to an employment tribunal to determine the details of the pension entitlement. Whilst some matters remain the subject of litigation, the Ministry of Justice (MoJ) on 17 June 2014 published a statement indicating that, in 2015/16, it will put in place a pension scheme for eligible fee-paid judicial office holders for whom it is responsible. The scheme will apply to fee-paid service from 7 April 2000 to 31 March 2015 and will mirror the current judicial pension scheme under the Judicial Pension and Retirement Act 1993 for salaried judiciary.
4. When the 1993 Act was enacted, it was not envisaged that fee-paid office holders would be entitled to a pension and MoJ is now seeking to remedy that situation. By way of a government amendment tabled on 11 September to the Pension Schemes Bill currently before Parliament, MoJ is seeking to amend the 1993 Act so as to empower the Lord Chancellor, by way of secondary legislation, to establish pension arrangements for fee-paid judicial office holders; and to facilitate a range of technical consequential changes.

5. The scheme established by the 1993 Act for salaried judges is UK-wide. With its provisions now to be extended to cover fee-paid judiciary, this would include those eligible office holders among the Northern Ireland court judiciary for whom MoJ is responsible. The precise posts affected have yet to be determined in Northern Ireland.
6. As the 1993 Act, presently constituted, applies also to 'devolved' salaried judicial positions for which Northern Ireland Departments have responsibility, extending its application to devolved office holders who operate on a fee-paid basis is now required. Litigation already before Northern Ireland's industrial tribunals includes claims from both devolved and excepted judiciary here. The expectation of action is clear and, although there are outstanding questions for other Departments to resolve as to coverage of new arrangements, I am satisfied that my own Department's fee-paid tribunal judiciary require appropriate pension arrangements to be put in place.
7. When the ongoing tribunal proceedings in Northern Ireland reconvene in October, following a stay, the President of the Tribunals will want to consider what progress has been made towards developing a remedy scheme.
8. The Departments responsible for devolved Northern Ireland judiciary are therefore very conscious of the need to ensure that eligible office holders in this process are not prejudiced by failure to put in place a remedy pension scheme. Having considered the options, and taking into account the UK-wide nature of the 1993 provisions, they have agreed that it is appropriate to seek to extend the amendments now being taken forward in Parliament, to the Pension Schemes Bill, so that they may be applied to Northern Ireland.
9. Pursuing this approach will enable the Lord Chancellor's powers to establish a pension scheme for fee-paid judiciary to be extended to include the devolved judicial office holders. The relatively small number of office holders affected in the tribunal judiciary in Northern Ireland fall within the responsibility of my Department, the Department for Social Development (DSD) and the Department of Justice (DoJ).
10. Following discussions with DoJ and DSD, it was agreed that my Department should take the co-ordinating role in seeking Executive approval, in principle, for a Legislative Consent Motion which, if agreed by the Assembly, would allow the relevant provisions of the Westminster Pension Schemes Bill to extend to Northern Ireland.
11. I am now in a position to advise the Committee that I have sought and obtained Executive approval to proceed in this way. The exact timing of the proposed LCM has yet to be confirmed and I will write to the Committee again when I have that information.
12. Officials in Northern Ireland will liaise with their colleagues in the Ministry of Justice on the content of the secondary legislation.

13. At this stage, with the Northern Ireland litigation still ongoing, the exact financial implications of being required to provide pensions for eligible devolved fee-paid judges have yet to be fully quantified. Officials have, however, been engaging on the financial analysis with the Government Actuary's Department and other relevant bodies.
14. I consider that the relevant provisions are compatible with the European Convention on Human Rights as defined in section 1 of the Human Rights Act 1998.
15. There is no adverse impact on those listed under section 75 of the Northern Ireland Act 1998; therefore, a full Equality Impact Assessment is not required.
16. There are no regulatory implications.
17. I wanted the Committee to be aware of this issue in advance of any further actions to secure the Assembly's agreement to the LCM. I am very happy to provide further briefing should the Committee wish, and I will ensure that the Committee is updated with the details of the Legislative Consent Memorandum which will be laid before the Assembly within 10 working days of the completion of the Parliamentary stage during which the relevant amendment was made. I trust that this information is helpful to the Committee.

Yours sincerely,

DR STEPHEN FARRY MLA
Minister for Employment and Learning