

**Committee for Finance and Personnel**

# **Report on the Public Service Pensions Bill (NIA Bill 23/11-15)**

**Together with the Minutes of Proceedings of the Committee  
Relating to the Report, Memoranda and the Minutes of Evidence**

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Report: NIA 149/11-15 Committee for Finance and Personnel**



# Membership and Powers

## Powers

The Committee for Finance and Personnel is a Statutory Departmental Committee established in accordance with paragraphs 8 and 9 of the Belfast Agreement, Section 29 of the Northern Ireland Act 1998 and under Assembly Standing Order 48. The Committee has a scrutiny, policy development and consultation role with respect to the Department of Finance and Personnel and has a role in the initiation of legislation.

The Committee has the power to;

- consider and advise on Departmental budgets and annual plans in the context of the overall budget allocation;
- approve relevant secondary legislation and take the Committee Stage of primary legislation;
- call for persons and papers;
- initiate inquiries and make reports; and
- consider and advise on matters brought to the Committee by the Minister of Finance and Personnel.

## Membership

The Committee has eleven members, including a Chairperson and Deputy Chairperson, with a quorum of five members. The membership of the Committee during the current mandate has been as follows:

Mr Daithí McKay<sup>1</sup> (Chairperson)  
 Mr Dominic Bradley (Deputy Chairperson)  
 Mrs Judith Cochrane  
 Mr Leslie Cree MBE  
 Ms Megan Fearon<sup>2</sup>  
 Mr Paul Girvan  
 Mr John McCallister<sup>3 4</sup>  
 Mr Ian McCrea<sup>5 6</sup>  
 Mr Mitchel McLaughlin  
 Mr Adrian McQuillan  
 Mr Peter Weir<sup>7</sup>

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- 1 Mr Daithí McKay replaced Mr Conor Murphy MP with effect from 2 July 2012.
  - 2 Ms Megan Fearon was appointed to the Committee with effect from 10 September 2012.
  - 3 Mr Roy Beggs replaced Mr Ross Hussey with effect from 23 April 12.
  - 4 Mr John McCallister replaced Mr Roy Beggs with effect from 15 October 2012.
  - 5 Mr David McIlveen replaced Mr David Hilditch with effect from 1 October 2012.
  - 6 Mr Ian McCrea replaced Mr David McIlveen with effect from 16 September 2013.
  - 7 Mr Peter Weir replaced Mr William Humphrey with effect from 1 October 2012  
 Ms Caitríona Ruane was a member of the Committee from 23 May 2011 to 12 September 2011.  
 Mr Paul Maskey was a member of the Committee from 23 May 2011 to 2 July 2012.
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## List of Abbreviations and Acronyms used in the Report

|            |                                                                      |
|------------|----------------------------------------------------------------------|
| BMA        | British Medical Association                                          |
| CARE       | Career Average Revalued Earnings                                     |
| CPI        | Consumer Price Index                                                 |
| DFP        | Department of Finance and Personnel                                  |
| FBU        | Fire Brigades Union                                                  |
| FDA        | First Division Association                                           |
| GAD        | Government Actuary's Department                                      |
| GB         | Great Britain                                                        |
| GDP        | Gross Domestic Product                                               |
| ICTU (NIC) | Irish Congress of Trade Unions (Northern Ireland Committee)          |
| IFRP       | Independent Financial Review Panel                                   |
| INTO       | Irish National Teachers' Organisation                                |
| LCM        | Legislative Consent Motion                                           |
| NASUWT     | National Association of Schoolmasters Union of Women Teachers        |
| NERI       | Nevin Economic Research Institute                                    |
| NI         | Northern Ireland                                                     |
| NIHRC      | Northern Ireland Human Rights Commission                             |
| NICS       | Northern Ireland Civil Service                                       |
| NILGA      | Northern Ireland Local Government Association                        |
| NICSCS     | Northern Ireland Civil Service Compensation Scheme                   |
| NIGLOSC    | Northern Ireland Local Government Officers' Superannuation Committee |
| NPA        | Normal Pension Age                                                   |
| POA        | Prison Officers' Association                                         |
| SPA        | State Pension Age                                                    |
| TUS        | Trade Union Side                                                     |
| UK         | United Kingdom                                                       |

# Executive Summary

The Public Service Pensions Bill aims to put in place the legislative framework for major pension reform across the public sector in Northern Ireland. It follows changes in Great Britain, by providing for the implementation locally of the recommendations of the Independent Public Service Pensions Commission, led by Lord Hutton, which respond to rising pension costs for taxpayers and employers and increases in longevity over recent decades.

At the core of the reforms provided for in the Bill is a move away from final salary pension schemes to a new career average revalued earnings scheme model, with a linkage between normal pension age and state pension age being applied generally in the public service schemes. The reforms will have an impact on a wide range of public service employees, including civil servants, local government workers, teachers, health service workers, devolved judiciary, firefighters and police officers. In this respect, the Bill has the potential to affect upwards of two hundred and sixteen thousand employees working within the public services and representing over thirty per cent of the total workforce in Northern Ireland.<sup>1</sup>

This report sets out the Committee for Finance and Personnel's consideration of the Bill at Committee Stage, which commenced on 26 June 2013. However, given the significance of the reforms in the context of the predominance of the public sector in the local economy, the Committee has actively scrutinised the progress of the proposals since January 2013. This included regular engagement with stakeholders, including the applicable trade unions and the Department of Finance and Personnel, in order to establish a strong evidence base and to identify early the impacts of the proposed reforms and any issues of concern. Moreover, the Committee prioritised the Bill, which comprises 37 clauses and 9 schedules, in its work programme to ensure that there was no undue delay in concluding the scrutiny.

As part of its consideration of the Bill, the Committee issued a public call for evidence, received written submissions, held a series of oral hearings and engaged in follow up correspondence with stakeholders. In addition to scrutinising the policy intention of the reforms, members examined the Bill in terms of the operational aspects of the provisions and the technical drafting. This detailed work resulted in a wide range of issues being raised with the Department and upon which some helpful clarification, explanation and assurances have been received, the detail of which is recorded in the appendices to this report.

Amongst the key issues from the evidence, concerns arose regarding: the cost and benefit of the reforms; governance provisions; aligning normal pension age with state pension age and the inflexibility of fixing the normal pension age in primary legislation; safeguards for consultation and for sufficient Assembly control; and aspects of the provisions for revaluation and for reviewing actuarial valuations and employer contributions.

While the Committee is broadly content with the provisions in the Bill as drafted, it is unable to agree clause 10 (Pension age) due to identified concerns, and is calling for this clause to be amended in addition to amendments being tabled at Consideration Stage to clauses 5, 12, 13 and 14. It is intended that this report on the Bill, which also includes supplementary policy recommendations, will inform the contributions of Assembly Members to the Consideration Stage debate.

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1 Assembly Research and Information Service Bill Paper, 24 June 2013, page 4  
<http://www.niassembly.gov.uk/Documents/Finance/legislation/Public-Service-Pensions-Bill/Public%20Service%20Pensions%20Bill%20Paper.pdf>

## Key Conclusions and Recommendations

1. As part of its examination of the proposed public service pension reforms provided for in the Bill, the Committee undertook scrutiny at three levels: the policy intention of the reforms; the structural and operational aspects of the provisions in the Bill; and in terms of the technical drafting of the Bill. This detailed work, which was informed by stakeholder evidence collected in advance of the Bill being introduced to the Assembly and during Committee Stage, resulted in a wide range of issues being raised with DFP. In this regard, the Committee acknowledges both the contribution of the stakeholders, including the various trade union representatives, in informing the Committee deliberations and the responsiveness of DFP in seeking to provide clarification, explanation and assurances on issues arising from the evidence. *(Paragraph 62)*
2. The Committee notes the variability in the estimates of the financial penalty which HM Treasury has confirmed it will apply if the public sector pension reforms provided for in the Bill are delayed or not implemented in line with GB. Nonetheless, the Committee accepts that, given the existing financial framework for devolution, the direct reduction in the block grant as a result of not proceeding with the reforms would place a substantial pressure on the Executive's budget and, in particular, on the funding available for delivering priority frontline public services in NI. That said, given the significance of the reforms in terms of the predominance of the public sector in the NI economy, the Committee considers that, in expecting the Executive to follow parity on this devolved matter, the UK Government should have provided a macroeconomic appraisal of the Hutton reforms at a regional level. This would have facilitated the Executive and Assembly in taking decisions on the public sector pension reforms on the basis of more complete evidence. *(Paragraph 74)*
3. The Committee welcomes the confirmation from DFP that the Minister of Finance and Personnel will table an amendment at Consideration Stage to amend clause 5 (2) to replace 'must' with 'may' on line 6; thereby removing the explicit requirement for NILGOS to act as the pension board for the local government pensions scheme in NI and thus providing greater flexibility which was requested in the evidence from NILGA. *(Paragraph 77)*
4. In light of the concerns raised with the provisions in clause 10 setting NPA in primary legislation, the Committee was unable to agree this clause as drafted. In particular, the Committee believes that there is a need for sufficient flexibility to enable evidence-based decisions to be taken at a scheme level on whether certain public service roles, especially that of firefighters, should have a lower NPA than is set in the Bill. As such, the Committee recommends that the Minister of Finance and Personnel tables the necessary amendment to clause 10 at Consideration Stage to provide this flexibility, on the basis that any costs arising from future decisions to vary from parity in this area at a scheme level will be met by the responsible departments. *(Paragraph 101)*
5. Given the concerns raised in the evidence regarding the need for DFP's regulatory powers in the Bill to be tempered with robust consultation requirements, the Committee welcomes both the assurances from the Department that it will follow a good-practice approach in consulting on proposed statutory rules generally and the confirmation that the Minister will table an amendment at Consideration Stage to require DFP directions and regulations under clause 12 to be subject to consultation with the relevant stakeholders. The Committee will, nonetheless, wish to monitor the practical outworking of the DFP commitment and assurances in this area. This will include careful scrutiny – both at the 'SL1' stage in the secondary legislation process and of the reports to be laid before the Assembly under clauses 22 and 23 – of the extent and outcome of the consultation undertaken on proposed regulations arising from the Bill. *(Paragraph 108)*

6. The Committee recommends to the Assembly that the following amendment is made to clause 13(7) of the Bill, in order to make explicit the requirement for the person appointed to review the actuarial valuation to be an independent person:

**Clause 13, Page 9, Line 20**

*After 'qualified' insert-*

*'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.'*

*(Paragraph 117)*

7. Arising from its consideration of whether the Bill provides for sufficient checks and balances on departments' powers to make pension scheme changes under subordinate legislation, the Committee recognises that there is a balance to be struck in terms of requiring the higher level of Assembly scrutiny, in the form of affirmative resolution, for subordinate legislation dealing with more substantive and potentially controversial issues, while avoiding the inefficient use of plenary time in debating minor or routine changes. Members are also mindful that, under the negative resolution procedure, committees or individual Members would have the option to table a plenary motion for annulment 'praying against' scheme changes which have given rise to concerns. (Paragraph 127)
8. In this regard, the Committee would recommend that stakeholders, including the trade unions, who have concerns with any future scheme changes ensure that these are brought to the attention of the applicable Assembly committee at the earliest opportunity. In addition, the Committee calls for further assurance from DFP that it will observe the '21 day rule' in relation to any proposals which it makes for negative resolution regulations making scheme changes under the provisions of the Bill. The Committee would advise the other applicable Assembly committees to seek similar assurances on this issue from their respective departments. (Paragraph 128)
9. As a result of its detailed scrutiny of the text of the Bill, the Committee identified a minor typographical error in clause 14(1), line 24, and members welcome the Department's subsequent agreement to table an amendment at Consideration Stage to rectify this error. (Paragraph 136)
10. In summary, the Committee is content with the provisions in the Bill as drafted, aside from:
- clauses 5 (Pension board), 12 (Employer cost cap) and 14 (Information about benefits), for which the Department has undertaken to table amendments to address issues identified by stakeholders and the Committee;
  - clause 13 (Employer contributions in funded schemes), for which the Committee will table an amendment; and
  - clause 10 (Pension age), which the Committee could not agree as drafted due to the aforementioned concerns.

This report on the Bill, which includes supplementary policy recommendations, is issued to inform the contributions of Assembly Members to the Consideration Stage debate. (Paragraph 138)

# Introduction

## Background to the Bill

1. The UK Coalition Government announced a programme of public service pension reforms at Budget 2011, which would follow the recommendations contained in the October 2010 and March 2011 reports of the Independent Public Service Pensions Commission, chaired by Lord Hutton (hereafter 'the Hutton Review'). The terms of reference for the Hutton Review were:

*'To conduct a fundamental structural review of public service pension provision and to make recommendations to the Chancellor and Chief Secretary on pension arrangements that are sustainable and affordable in the long term, fair to both the public service workforce and the taxpayer and consistence with the fiscal challenges ahead, while protecting accrued rights'.<sup>2</sup>*

The reforms arising from the Hutton Review are the latest in a series of steps taken by the current and previous Westminster Governments all of which seek to decrease the cost of public service pensions as a proportion of Gross Domestic Product (GDP).

2. The Committee is mindful that, while public service pensions are a devolved matter in Northern Ireland (NI), provisions within the Belfast/Good Friday Agreement and the NI Act 1998 define that public service pensions fall within the 'parity' convention<sup>3</sup>. This convention is intended to ensure a consistent UK-wide approach for certain policies and legislation. When presented with policy proposals in areas governed by the parity convention, legislators within Devolved Administrations have to decide whether:
  - To adhere to the parity convention and enact legislation mirroring comparable legislation in Great Britain (GB); or,
  - To depart from parity and enact legislation that is different from the presented GB legislation.

A consequence of any decision to depart from parity is that any extra costs incurred in developing local legislation will be funded through a commensurate reduction in the funding available to that Devolved Administration.

3. In its initial briefing to the Committee on the proposed way forward in NI, DFP highlighted that, on 8 March 2012, the Executive had agreed:
  - *'to commit to the policy for a new career average revalued earnings (CARE) scheme model with pension age linked to State Pension Age to be adopted for general use in the public service schemes; and*
  - *to adopt this approach consistently for each of the different public sector pension schemes in line with their equivalent scheme in Great Britain and not to adopt different approaches for Northern Ireland'.<sup>4</sup>*
4. The Bill to implement the Hutton Review recommendations in GB was introduced in the House of Commons on 13 September 2012. Initially, DFP considered the option of a Legislative Consent Motion (LCM) which, if agreed by the Assembly, would have given authority to the UK Coalition Government to include NI in the Westminster legislation. The LCM proposal was discussed by the Executive on 22 November 2012 but agreement was not reached and the motion was not brought to the Assembly.
5. The Public Service Pensions Bill was consequently introduced to the Assembly by the then Minister of Finance and Personnel, Mr Sammy Wilson MP MLA, on 17 June 2013. The overall

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2 [http://www.hm-treasury.gov.uk/indreview\\_johnhutton\\_pensions\\_tor.htm](http://www.hm-treasury.gov.uk/indreview_johnhutton_pensions_tor.htm)

3 Assembly Research and Information Service Bill Paper, 24 June 2013

4 DFP correspondence, 13 December 2012, Appendix 4

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purpose of the Bill is to reform pension schemes across the public sector in NI. In broad terms, the Bill would provide for:

- a move to a CARE scheme model of pension saving;
- a direct link to equalise schemes' Normal Pension Age (NPA) with the State Pension Age (SPA), except for the police and fire and rescue services;
- an NPA of 60 (subject to regular review) for the police and fire and rescue services;
- transitional protection measures for scheme members who are within 10 years of the existing NPA on 1 April 2012;
- a final salary link for any final salary pension accrued prior to the date at which the new schemes will commence;
- a scheme cost cap with a default mechanism to maintain employer scheme costs within set limits;
- extension of scheme access arrangements to allow public service workers to retain membership of public service schemes whose employment is compulsorily transferred to a new employer; and
- revised measures for the management, regulation and administration of schemes.

6. Given that the Bill takes the form of 'enabling' or 'framework' legislation, further secondary legislation will need to be brought forward by the responsible departments whose remits include the main public service pension schemes affected by the reforms. The main schemes are detailed in the table below, though it should be noted that a range of other public sector schemes, covering arms-length and other public bodies, will be equally affected by the reforms.

| <b>Main Pension Scheme</b>                                                              | <b>Minister</b>     | <b>Department</b>                                       |
|-----------------------------------------------------------------------------------------|---------------------|---------------------------------------------------------|
| Northern Ireland Teachers' Pension Scheme                                               | John O'Dowd, MLA    | Department of Education                                 |
| Local Government Pension Scheme (Northern Ireland)                                      | Mark H Durkan, MLA  | Department of the Environment                           |
| Principal Civil Service Pension Scheme (Northern Ireland)                               | Simon Hamilton, MLA | Department of Finance and Personnel                     |
| Health and Social Care Pension Scheme<br>Firefighters Pension Scheme (Northern Ireland) | Edwin Poots, MLA    | Department of Health, Social Services and Public Safety |
| Police Service of Northern Ireland Pension Scheme                                       | David Ford, MLA     | Department of Justice                                   |

### **The Committee's Approach**

7. Following correspondence from DFP on 13 December 2012, the Committee, at its meeting on 9 January 2013, sought an oral briefing from DFP officials on the content of the proposals to be included in the Bill. DFP officials subsequently briefed the Committee on the policy aims and expected timeframe for the passage of the primary legislation. It was noted that, in order to align with GB in terms of the implementation date of April 2015, the secondary legislation giving effect to the reforms across the various public service pension schemes in NI would follow enactment of the Bill.
8. Prior to the Bill being introduced to the Assembly, the Committee proactively gathered written and oral evidence from key stakeholders, in particular Trade Union Side (TUS) and DFP, in order to establish a strong evidence base and to identify early the impacts of the proposed reforms and any issues of concern. During this preliminary scrutiny, responses were sought from DFP on a range of issues including:

- full details of how the potential cost of £262 million per annum to the Northern Ireland block grant from a failure to implement the reforms was calculated and clarification on whether this amount in deduction to the block grant will be imposed on the Executive by HM Treasury in such circumstances;
  - detail of DFP communication with other departments in relation to the full scheme triennial assessments;
  - a comprehensive list of all the pension schemes and associated stakeholders affected by the Bill and the implications it will have for each scheme;
  - full details of equality screening;
  - information on the revised measures for management, regulation and administration of the various pension schemes;
  - detail of the legislative provisions which allow for the transfer of staff from one scheme to another;
  - an assessment of the implications of the agreed amendments to the Westminster Bill;
  - clarification on how the drafting of the secondary legislation will be sequenced in relation to the Bill; and
  - copies of all responses to the public consultation on the policy proposals.
9. In addition, the Committee sought to establish what variation could be applied locally to the corresponding GB reforms without incurring a financial reduction to the block grant. In follow up correspondence, DFP officials confirmed that scope exists at the secondary legislation stage to vary the design of the local pension schemes without financial implications, provided they fall within the cost ceiling of the equivalent GB schemes. A detailed briefing on the areas where flexibility exists for varying from GB schemes is included at **Appendix 4**.
10. During its preliminary scrutiny of the policy proposals, the Committee also liaised with the other relevant Assembly committees given that the responsibility for scrutinising the subsequent subordinate legislation will fall to the individual committees as applicable. Following the commencement of Committee Stage on 26 June 2013, the Committee prioritised the Bill in its work programme to ensure that there was no undue delay in concluding the scrutiny.
11. The Committee received 8 formal written submissions in response to its public call for evidence on the Bill and a substantial body of follow up correspondence was received as issues emerged from the evidence. In addition, written responses were received from the other Assembly committees whose departmental remits include public service pension schemes affected by the Bill. In this regard, the Committee for Education and the Committee for the Environment identified specific issues, which are alluded to later in the report. The stakeholder submissions are included at **Appendix 3** and the various pieces of correspondence are included at **Appendix 3**.
12. Oral evidence was received from the following stakeholders: the Northern Ireland Human Rights Commission (NIHRC); the Northern Ireland Public Service Alliance (NIPSA); the Northern Ireland Committee of the Irish Congress of Trade Unions (ICTU (NIC)); the Fire Brigades Union (FBU); the First Division Association (FDA); the National Association of Schoolmasters Union of Women Teachers (NASUWT); the Irish National Teachers' Organisation (INTO); the British Medical Association (BMA); UNISON; the Northern Ireland Local Government Association (NILGA); and the Nevin Economic Research Institute (NERI). The Official Reports of the evidence sessions are provided at **Appendix 2**.
13. In line with normal practice, the Committee also invited DFP to respond to each issue raised in the evidence. Advice was received on legal issues from the Assembly Legal Services and the Committee also received advice from the Examiner of Statutory Rules on his consideration of the Bill in conjunction with the Delegated Powers Memorandum submitted



by DFP. In this regard, the Examiner highlighted for information matters that arose during the passage of the equivalent Bill in Westminster.

14. At its meeting on 11 September 2013, the Committee agreed to seek an extension to the Committee Stage of the Bill until 29 November 2013 on the grounds that this would provide sufficient time for the oral evidence to be taken and enable the Committee to consider in detail the issues arising from the evidence. On 24 September 2013, the Assembly agreed a motion to extend the Committee Stage to 29 November 2013.

#### **Overview of the Bill**

15. The Bill, as drafted, contains thirty seven clauses and nine schedules, the provisions of which are described in the Explanatory and Financial Memorandum as follows:

#### ***Clause 1: Schemes for persons in public service.***

16. This clause contains the main enabling power for new public service pension schemes and schemes providing other benefits, such as injury and compensation benefits made under this Bill.

#### ***Clause 2: Responsible authority for schemes.***

17. Enables those departments listed in Schedule 2 to make scheme regulations for the main categories of persons in public service.

#### ***Clause 3: Scheme regulations.***

18. Contains additional provisions about how the power to make scheme regulations under the Bill may be used.

#### ***Clause 4: Scheme Manager.***

19. Makes provision for public service pension schemes to have a scheme manager who is to be responsible for managing or administering the scheme.

#### ***Clause 5: Pension Board.***

20. Require schemes to provide for the establishment of a pension board to assist the scheme manager with certain matters.

#### ***Clause 6: Pension Board: Information.***

21. Requires that the scheme manager must publish information about the pension board for the scheme or schemes.

#### ***Clause 7: Scheme Advisory Board.***

22. Requires schemes to provide for the establishment of a scheme advisory board to advise on certain matters.

#### ***Clause 8: Types of scheme.***

23. Sets constraints on the design of schemes, including requiring schemes that are defined benefits schemes to provide those benefits through a CARE scheme or such other description of defined benefits scheme as DFP may specify in regulations (but not a final salary scheme).

#### ***Clause 9: Revaluation.***

24. Provides for the revaluation of pensionable earnings of a person in a CARE scheme in accordance with changes in prices or earnings as set out in an annual order made by DFP

**Clause 10: Pension age.**

25. Contains requirements relating to the NPA of schemes made under this Bill, including linkage with SPA in most cases.

**Clauses 11: Valuations**

26. Requires that defined benefits schemes to be actuarially valued in accordance with DFP directions.

**Clauses 12: Employer Cost Cap**

27. Requires scheme regulations for defined benefits schemes to set an employer cost cap and sets out how this cap should be set, measured and operated.

**Clause 13: Employer contributions in funded schemes.**

28. Provides for the setting of the rate of employer contributions in defined benefits schemes with a pension fund, most notably the funded Local Government Pension Scheme (NI). The clause requires an actuarial valuation of the pension fund to inform the setting of the employer contribution rate and makes provision for this valuation to be reviewed.

**Clause 14: Information about benefits.**

29. Provides for scheme regulations to require scheme managers (for defined benefit schemes under clause 1) to provide active pension scheme members with benefit information statements in accordance with the requirements of this clause.

**Clause 15: Information about schemes.**

30. Relates to the collection and publication of information about schemes under clause 1. It allows DFP to direct schemes to publish information or to provide information to DFP, and to specify how and when that information is to be published or produced.

**Clause 16: Records.**

31. Allows DSD to make regulations requiring scheme managers of pension schemes made under clause 1 (and any connected schemes) to keep specified records (e.g. on information about contributions due to the scheme).

**Clause 17: Regulatory oversight.**

32. Makes provision about the regulatory responsibility of the Pensions Regulator in relation to the governance and administration of public service schemes made under the Bill, connected schemes and other public service pension schemes.

**Clause 18: Restriction of existing pension schemes.**

33. Provides that benefits may not be provided under existing pension schemes in relation to service after the closing date for the scheme. Its effect is to bring to an end further accrual of pension benefits in existing schemes, except where transitional arrangements have been agreed to allow those who are closest to retirement to continue to accrue benefits under the scheme.

**Clause 19: Closure of existing injury and compensation schemes.**

34. Deals with existing injury and compensation schemes. Permits scheme regulations to provide for the closure or restriction of existing schemes that provide for the payment of benefits relating to compensation for loss of office and for injury benefits.

**Clause 20: Final salary link.**

35. This clause introduces Schedule 7, which sets out the final salary link that applies to past service in those final salary schemes restricted under clause 18.

**Clause 21: Consultation.**

36. Obliges the responsible authority to consult those likely to be affected before making or changing scheme regulations. The current procedures for making changes to current public service pension schemes vary from scheme to scheme.

**Clause 22: Procedure for protected elements.**

37. The policy intention is that the reforms legislated for under this Bill are designed to last for at least 25 years. This clause specifies enhanced consultation and report procedures for changes to protected elements of a scheme for a period of 25 years.

**Clause 23: Procedure for retrospective provision.**

38. Provides a procedure to be followed when retrospective provisions are included within scheme regulations proposed by the responsible authority.

**Clause 24: Other procedure.**

39. Sets out the legislative procedures which apply to the making of scheme regulations. A higher level of Assembly scrutiny is required in each case if scheme regulations are used to amend primary legislation or to make retrospective amendments that appear to the responsible authority to have significant adverse effects in relation to members of schemes.

**Clause 25: Extension of schemes.**

40. This clause allows schemes made under clause 1 to be extended to persons who are not in the main categories of persons in public service specified there.

**Clause 26: Non-scheme benefits.**

41. This clause allows scheme managers and employers to make payments towards the provision of pensions and other benefits that are not delivered through a scheme made under clause 1 for persons who could have access to such schemes. This will enable employers to contribute to private occupational pension schemes where: members of public service schemes wish to take out or retain private occupational pensions in addition to (or instead of) being members of public service schemes.

**Clause 27: Consequential and minor amendments.**

42. This clause introduces Schedule 8, which contains consequential and minor amendments to primary legislation that are required because of the provisions in the Bill.

**Clause 28: Existing local government scheme.**

43. Provides for certain regulations made under Article 9 of the Superannuation (NI) Order 1972 to have effect as if they were scheme regulations made under clause 1 of the Bill. This clause will only apply to regulations under which benefits are provided to or in respect of service on or after 1st April 2014. It will only apply to regulations that provide for pension benefits in respect of service on or after that date.

**Clause 29: Existing schemes for civil servants: extension of access.**

44. This clause introduces Schedule 9, which amends the Superannuation (NI) Order 1972 to extend access to schemes made under Article 3 of that Order.

**Clause 30: New public body pension schemes.**

45. There are defined benefits pension schemes for those in public service aside from the main schemes for civil servants, local government workers, health service workers, teachers, police, fire and rescue services, and devolved judiciary. The clause imposes constraints on the design of new pension schemes that may be created under the power in clause 31

for those bodies and offices whose pension schemes are restricted for future accrual and whose members cannot join one of the schemes established under clause 1. It also governs the design of pension schemes that are set up in the future or established under future legislation for public bodies (unless future legislation makes specific, different provision).

**Clause 31: Power to restrict other existing public body pension schemes.**

46. Contains provision for DFP to specify public bodies whose pension schemes would be restricted and so that no benefits are provided under the scheme to or in respect of a person in relation to their service in the schemes after a date to be specified.

**Clause 32: Existing public body pension schemes: pension age.**

47. This clause allows an existing public body pension scheme to reform itself by including a provision that the normal pension age and deferred pension age of members of those schemes is to be the same as their state pension age (subsection (1)(a)). The link may only apply to benefits accrued under the scheme after the provision to establish that link took effect.

**Clause 33: General interpretation.**

48. This clause contains definitions of terms used throughout the Bill.

**Clause 34: Regulations, orders and directions.**

49. This clause sets out the meaning of 'affirmative procedure'. Subsection (2) provides that directions given under the Bill by DFP may be varied or revoked.

**Clause 35: Financial provision.**

50. This clause provides that any expenditure for the provision of pensions or other sums payable to present or former holders of judicial office are to be paid out of money provided by the Assembly.

**Clause 36: Commencement.**

51. This clause provides when and how the provisions of the Bill are to come into force. The provisions listed in subsection (1) come into force automatically on the day the Bill is enacted.

**Clause 37: Short title.**

52. This Act may be cited as the Public Service Pensions Act (NI) 2013.

**Schedule 1: Persons in Public Service: Definitions**

53. This schedule provides the definitions of person in public service.

**Schedule 2: Responsible Authorities**

54. This schedule provides the definition of responsible authorities.

**Schedule 3: Scope of Scheme Regulations: Supplementary Matters**

55. This schedule provides the scope of the regulations by setting out the eligibility and admission to membership.

**Schedule 4: Regulatory Oversight**

56. This schedule provides for regulatory oversight and consequential changes to current affected legislation.

**Schedule 5: Existing Pension Schemes**

57. This schedule provides the affected schemes.

**Schedule 6: Existing Injury and Compensation Schemes**

58. This schedule provides for the scope of affected schemes.

**Schedule 7: Final Salary Link**

59. This schedule provides for the person who remains in an old scheme for past service.

**Schedule 8: Consequential and Minor Amendments**

60. This schedule provides for consequential and minor amendments

**Schedule 9: Existing Schemes for Civil Servants: Extension of Access**

61. This schedule amends the Superannuation (NI) Order 1972 to extend access to schemes under that Order which provide for superannuation benefits for civil servants.

## Key Issues from the Evidence

62. **As part of its examination of the proposed public service pension reforms provided for in the Bill, the Committee undertook scrutiny at three levels: the policy intention of the reforms; the structural and operational aspects of the provisions in the Bill; and in terms of the technical drafting of the Bill. This detailed work, which was informed by stakeholder evidence collected in advance of the Bill being introduced to the Assembly and during Committee Stage, resulted in a wide range of issues being raised with DFP. In this regard, the Committee acknowledges both the contribution of the stakeholders, including the various trade union representatives, in informing the Committee deliberations and the responsiveness of DFP in seeking to provide clarification, explanation and assurances on issues arising from the evidence.**

63. A number of the key themes and issues raised in the written and oral evidence received by the Committee are outlined below. More detailed information on the outputs from the Committee's scrutiny is included in the appendices to this report.

### **Cost and Benefit of the Reforms**

64. The Committee recognises that a core aspect of the Bill is to reform the current public sector pensions landscape in order to control the cost of schemes that are funded by the public purse. In its initial evidence, DFP indicated that failure to or any delay to legislate on the reforms could result in a reduction in the block grant of in excess of £262 million for the first year in terms of savings foregone.

65. Members are very mindful of the consequences for the delivery of key public services in NI from a reduction to the block grant of this magnitude, especially in the current period of budgetary constraint. This concern was reflected in the evidence from some stakeholders, including the Equality Commission, which stated that 'this reduction could exacerbate some existing inequalities if departmental budgets are reduced as a result of changes to the block grant'.<sup>5</sup>

66. From the stakeholder evidence and Assembly research, however, it was also apparent that a 'macroeconomic' analysis or appraisal has not been undertaken of the proposed pension reforms at either a UK or NI level, including by the Hutton Review. In their evidence, the TUS representatives emphasised the need to assess the impact of increasing the age of retirement – particularly in terms of displacement in the labour market, whereby '...if you keep someone in work five years longer, someone else will not be getting that job for five years or until it becomes free...' – and the correlation between this and youth unemployment. TUS also indicated that it had done some work itself on macroeconomic analysis, referred to work by NERI on youth unemployment, and expressed a willingness to assist the Department in meeting the cost of a wider exercise.

67. As part of its preliminary scrutiny, the Committee pursued the issue of more accurate cost/savings estimates, including the absence of a macroeconomic appraisal, with DFP. Arising from this work, the Committee established that the estimated cost of £262m for the first year of not following the reforms was based on Government Actuary Department (GAD) methodology which applied assumptions in relation to the Health Service Scheme across the remaining main public sector schemes in NI. At the Committee's request, DFP agreed to commission further scheme-specific calculations by GAD (at a cost of £20k - £30k), for the purpose of providing more accurate estimated costs of not implementing the reforms in NI. The result of this work was an increase in the estimated cost of not implementing the reforms in the first year, from £262m to £300m.

68. While the Committee acknowledges the willingness of DFP to commission the additional work by GAD, members are mindful that this was a limited exercise, which did not, nor was it

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5 Correspondence from the Equality Commission, 26 September 2013, Appendix 3

intended to, provide a macroeconomic appraisal of the reforms. Moreover, DFP emphasised the scale and complexity of such an appraisal and, using the Hutton Review as a comparator, the Department suggested that the exercise could require a similar period of 9 months to complete and that the cost could potentially also reach several hundred thousands of pounds.

69. At its meeting on 26 June 2013, the Committee considered the options for obtaining a macroeconomic appraisal of the policy aims of the Bill and agreed in the first instance to establish what level of support TUS could provide in respect of the assessment. ICTU (NIC) subsequently provided an NERI discussion paper, entitled 'Increasing the Retirement Age for Public Sector Workers: Effects on the Wider Labour Market', as part of its written submission to the Committee on 30 August 2013.
70. In its paper, NERI contended that serious displacement in the labour market may be a consequence of increasing the retirement age and that this could take a prolonged period of time to adjust given the current distressed state of the labour market and the unique characteristics of the public sector. It was further highlighted that forcing people to work later may increase costs elsewhere and studies were cited which suggest that increasing the retirement age may lead to significant increases in disability entitlements.<sup>6</sup>
71. On 30 September 2013, the Department provided the Committee with a written response to the issues raised in the NERI paper. For its part, DFP argued that, whilst the paper pointed out some possible impacts of increasing the pension age, it did not take account of the wider macroeconomic impact of a failure to reform, in particular the costs in excess of £300 million per annum which would also have an impact on the labour market. Whilst the Department accepted that pension reform could result in short-term labour market impacts, it was of the view that, over the longer term, the labour market will adjust and that there is potential for longer-term benefits to emerge.
72. In continuing its scrutiny of this matter, at its meeting on 2 October 2013, the Committee agreed to seek information from DFP on what research has been done or can be done to provide a cost-benefit analysis specifically on the implications of NI not aligning the NPA with the SPA as proposed in the Bill. In response, the Department argued that:
- 'any divergence from the general policy on scheme pension age from the equivalent schemes in Great Britain is unnecessary, would be contrary to the Executive's agreement on pension reform on 8 March 2012, and would have inevitable financial implications against the Northern Ireland funding made available from HM Treasury.'*<sup>7</sup>
73. DFP further argued that additional work in this area would cost in the region of £10,000 to £15,000 plus VAT, would take 3 to 4 weeks to complete, would not address the 'benefits' of such a policy and would be subject to the same limitations as the previous work undertaken by GAD. Moreover, the Department contended that a more detailed actuarial analysis, for instance looking at how costs may evolve from 2015 to the long term, would cost considerably more and take considerably longer to issue.
74. **The Committee notes the variability in the estimates of the financial penalty which HM Treasury has confirmed it will apply if the public sector pension reforms provided for in the Bill are delayed or not implemented in line with GB. Nonetheless, the Committee accepts that, given the existing financial framework for devolution, the direct reduction in the block grant as a result of not proceeding with the reforms would place a substantial pressure on the Executive's budget and, in particular, on the funding available for delivering priority frontline public services in NI. That said, given the significance of the reforms in terms of the predominance of the public sector in the NI economy, the Committee considers that, in expecting the Executive to follow parity on this devolved matter, the UK Government should have provided a macroeconomic appraisal of the Hutton reforms at a regional level.**

6 Correspondence from NERI, Appendix 3

7 DFP correspondence, 21 October 2013, Appendix 4

**This would have facilitated the Executive and Assembly in taking decisions on the public sector pension reforms on the basis of more complete evidence.**

**Governance provisions**

75. As part of their examination of the Bill and the evidence received, members identified a range of issues in respect of the governance provisions, particularly in relation to clauses 5 and 7 which make provision for pension boards and scheme advisory boards respectively. The main issues are outlined below.
76. It was noted that clause 5, subsection (2) of the Bill provides that, in the case of a pension scheme for local government workers, the regulations *must* provide for the appointment of the Northern Ireland Local Government Officers' Superannuation Committee (NILGOSC) as the Pension Board for that scheme. However, in its evidence to the Committee, NILGA highlighted that the wording would have an effect that NILGOSC would act as both the Pension Board and also the Scheme Manager and, whilst such an arrangement is permissible in the equivalent GB legislation, it is not pre-determined in the way the NI Bill is for local government only. The concerns of NILGA in respect of clause 5(2) were also reiterated in the submission from the Committee for the Environment.
77. As a result of this issue being highlighted, a response was sought from the Department and **the Committee welcomes the confirmation from DFP that the Minister of Finance and Personnel will table an amendment at Consideration Stage to amend clause 5 (2) to replace 'must' with 'may' on line 6; thereby removing the explicit requirement for NILGOSC to act as the pension board for the local government pensions scheme in NI and thus providing greater flexibility which was requested in the evidence from NILGA.**
78. In its evidence, TUS called for the references in clause 5(5)(c) and (7)(b) to 'member representatives' to be amended to provide that these are appointed from the recognised trade unions for the scheme following consultation with ICTU (NIC). In this regard, the Committee welcomes the assurance in the DFP response that, as part of the secondary legislation process, the responsible departments and their TUS counterparts will have an opportunity to 'further refine scheme level arrangements as appropriate in the course of their overall consultations on new scheme regulations'.<sup>8</sup>
79. A further area in which the Committee raised a number of queries was in relation to safeguards for the proper governance and administration of schemes under clause 5, subsections (3), (4) and (5), including in terms of securing compliance with legislative requirements and the related sanctions for non-compliance. In its response, the Department provided assurance by explaining that:

*'There are extended powers for the Office of the Pension Regulator and an accompanying new code of practice will apply for schemes made under the Bill. The Pensions Regulator has powers to impose fines where appropriate where scheme mismanagement occurs'.<sup>9</sup>*
80. As part of its scrutiny of the governance provisions of the Bill, the Committee also examined the clause 7 requirement that scheme regulations for defined benefits scheme must provide for the establishment of a scheme advisory board (as distinct from the pension board) with responsibility for providing advice to the responsible authority, at the authority's request, on the desirability of changes to the scheme.
81. In written submissions to the Committee a number of concerns were raised by TUS regarding the composition of the board and it was proposed that the clause be amended to provide for a balanced representation. In its response, DFP reiterated the point that secondary legislation provides scope for individual departments, in conjunction with TUS, to refine scheme specific

8 DFP correspondence, 23 September 2013, response to written submissions, Appendix 4

9 DFP correspondence, 30 October 2013, Appendix 4



requirements and suggested that this might be the most appropriate stage for this to be addressed.

82. At its meeting on 6 November 2013, the Committee sought an assurance from DFP officials that scheme advisory boards would have a sufficient challenge function and independence. In response, members were advised that, regardless of its makeup, the scheme advisory board has a defined role for which it will be accountable and that it can advise on the desirability of scheme changes as it sees fit, even in the absence of a request to do so from the responsible authority under clause 7(1).
83. On the issue of independence, DFP pointed out that it is a requirement that the responsible authority satisfies itself that any appointed person does not have any conflict of interest and, as an additional measure, following discussions with the Pensions Regulator, draft guidance is being prepared on how the Regulator's code of practice will apply to the scheme advisory boards as well as to the pension boards. On the basis of the clarification and assurances received from DFP, the Committee decided not to pursue further amendments to clauses 5 and 7.

### **Normal Pension Age and State Pension Age**

84. It was clear from the stakeholder evidence that one of the most contentious impacts of the reforms arises from the provisions in clause 10 of the Bill which establish an automatic linkage between NPA and SPA for public servants generally and which set the NPA at 60 years of age for firefighters and the police. This will, in effect, mean that a large number of public sector employees will be unable to receive their full pension entitlement at the age expected when they first joined the scheme. Moreover, the Committee has noted from the research and evidence that, aside from firefighters and police officers, certain other physically or emotionally demanding public service roles (e.g. prison officers, teachers, paramedics and mental health nurses) have been identified as potentially problematic in terms of the consequences of an automatic linkage between NPA and future increases in the SPA, including the planned increase to 68 years of age in 2046.<sup>10</sup>
85. In considering these issues, members also noted from the evidence that, in recent years, a number of changes in secondary legislation have been implemented for new entrants to existing public service pension schemes. For example, for new entrants to local government, teachers, health and civil service pension schemes the NPA is now set at 65 years of age, while the NPA for entrants to the firefighters and police pension schemes was set at 60 years of age since 2006.
86. In terms of the argument against setting a link between NPA and SPA in primary legislation, the BMA cited the *Working Longer Review*, currently being undertaken by a tripartite partnership review group comprising NHS trade unions, NHS employers and health department representatives, which will consider, amongst other things, the evidence of the impact of working beyond 60 years of age. The BMA argued that the Bill should be amended to enable the findings of the *Working Longer Review* to be taken into account.<sup>11</sup>
87. Similarly, in its written response to the proposed reforms, UNISON cautioned that there should be careful consideration of the effect of working longer on specific groups of workers. Also citing the *Working Longer Review*, which will look at specific groups, such as paramedics, UNISON stated that the findings of this review should not be pre-judged and that:

*'The Northern Ireland Bill should at least enable schemes to be able to look objectively at the effect on members having to work longer and also take into account the views of employers. Employers may find it preferable that some groups have a lower normal*

10 Assembly Research and Information Service, Research Paper: Public Service Pensions Act – Consideration of Westminster Legislative Process <http://www.niassembly.gov.uk/Documents/Finance/legislation/Public-Service-Pensions-Bill/assembly-research/C-Research-Paper-Consideration-of-Westminster-Legislative-Process.pdf>

11 Official Report of oral evidence from BMA, 16 October 2013, Appendix 2

*retirement age rather than having to deal with issues including increasing long term sick leave and ill health retirements as retirement ages increase'.<sup>12</sup>*

88. In terms of the stakeholder concerns over the ability of affected staff to maintain fitness levels in order to fulfil their duties, the Committee undertook particular scrutiny of the case of firefighters. At their meeting on 9 October 2013, members took oral evidence from the FBU which stated that a finding from the 'Williams Review' indicated that up to 85% of fire fighters aged between 55 and 60 would not be able to maintain the fitness standards required to effectively conduct their duties.<sup>13</sup> Moreover, in responding to Committee queries on the scope for such firefighters to move to non-frontline roles, including community fire safety, the FBU pointed out that it had written confirmation from its employers on at least two occasions 'that there simply are not those redeployment opportunities in the Northern Ireland Fire and Rescue Service' and hence the risk of capability dismissals.<sup>14</sup> In addition, the FBU pointed out that national fitness standards have not yet been set for the Fire and Rescue Service and, therefore, a decision on NPA should await that outcome.
89. Whilst acknowledging that the Bill does not require firefighters to work to the age of 60, the FBU highlighted that, should a firefighter choose/have to retire before 60 years of age then this could result in an actuarial reduction to the overall pension entitlement of approximately 4% per year. As such, the FBU proposed an amendment to clause 10(2) of the Bill to enable the NPA to be set in scheme regulations and thereby provide flexibility for firefighters who do not meet the fitness standards to leave before 60 years of age without an actuarial reduction.
90. In its written responses to the Committee, DFP explained that, whilst clause 10 sets an NPA of 60 years of age for firefighters and police, it was not explicit in its requirement that all firefighters must work to the age of 60. The Department argued that such individuals have options and could choose to retire before the age of 60; however it was acknowledged that this would incur an actuarial reduction to the overall value of the pension.
91. In subsequent oral evidence to the Committee on 16 October 2013, DFP officials highlighted a more flexible approach being considered for firefighters in Scotland, which would set the NPA at 60 years of age but provide for an accrual rate to enable individual firefighters to leave earlier without such a heavy penalty to their pension. The DFP officials confirmed that scope would exist in the secondary legislation to adopt a similar approach in NI provided that it falls within the cost ceiling of the scheme, otherwise any costs over and above this would have to be met by that sector.
92. Given the FBU claims that a high proportion of individuals would not be able to achieve the required fitness standards and in order to understand the potential impact to public safety, the Committee wrote to the Minister for Health, Social Services and Public Safety for information on the options for firefighters to retire early with actuarial reduction and on whether scope exists to redeploy firefighters who are unable to meet the fitness standards into other roles within the public sector in NI.
93. In correspondence dated 19 November 2013, the Minister for Health, Social Services and Public Safety provided a response to the Committee. The Minister advised that, in terms of the potential numbers of firefighters aged 55 – 60 who cannot maintain the fitness standards and the implications, 'the position in Northern Ireland is unclear and the available information is incomplete'. As regards the scope for redeployment into the wider public sector, it was advised that:

12 UNISON response to public consultation, Appendix 3

13 The Williams Review – A Review for the Firefighters' Pension Committee  
[http://www.niassembly.gov.uk/Documents/Finance/Inquiries/Public%20Service%20Pensions%20Bill/Normal%20pension%20Age%20\(NPA\)%20Review%20-%20January%202013.PDF](http://www.niassembly.gov.uk/Documents/Finance/Inquiries/Public%20Service%20Pensions%20Bill/Normal%20pension%20Age%20(NPA)%20Review%20-%20January%202013.PDF)

14 Official Report of the oral evidence from FBU, 9 October 2013, Appendix 2

*'Under employment legislation retired firefighters cannot be provided with a more advantageous position which allows them to compete for employment in the wider public sector regardless of their individual circumstances'.<sup>15</sup>*

94. When undertaking its formal clause-by-clause consideration of the Bill on 20 November 2013, the Committee agreed to request an update from DFP on any developments in the negotiations on future pension arrangements for firefighters in Scotland, which might provide a model for the firefighters scheme in NI; particularly in terms of flexibilities for early departure with minimal actuarial reductions for firefighters aged between 55 – 60 years who are unable to maintain the operational fitness standards. A subsequent response from DFP, however, indicated that the Department did not have any further update on the position in Scotland in this regard.
95. On a separate front, in its evidence, NASUWT raised concern over the alignment of NPA with SPA in the case of teachers, particularly in terms of future increases from 65 to 68 years of age. In this regard, NASUWT highlighted that, whilst teachers do not have to achieve similar physical standards to firefighters, for example, the majority of teachers leaving the profession through redundancy cite being 'burned out' as the key reason and this could therefore have an impact on teaching standards. Similar concerns were raised in a submission from the Committee for Education, particularly in terms of the impact which increases in the retirement age for teachers may have on staff morale and well-being, the educational experience for pupils and on employment levels for newly qualified teachers.
96. The Committee also noted the case raised in relation to prison officers. In correspondence, the Prison Officers' Association (POA) stated that it had rejected the pension age of 65 for new entrants to the prison service, which falls under Principal Civil Service Pension Scheme (NI). The POA also explained that, in the course of consultations in GB on the Civil Service scheme design, an offer was made to the POA that represented a partial subsidy for operational staff in post on 1 April 2015 to retire aged 65 without incurring an actuarially reduced pension by means of purchasing a lower NPA of up to three years lower than their SPA. The POA rejected this offer since it felt that the existing pension age and pension entitlements formed part of the terms and conditions of employment and, in view of the increase of pension contributions from 13.4% to 18.9%, this was considered too expensive for its members.<sup>16</sup>
97. As part of its scrutiny of clause 10, the Committee sought DFP's view on the merits of an amendment to provide flexibility at secondary legislation stage for individual departments/ministers to determine in the scheme design the most appropriate NPA for schemes falling within their remit. In this regard, it was suggested that the provision, in clause 3(5), for DFP consent to scheme regulations may provide the necessary safeguard to ensure that any associated costs of varying from parity in this area would be met by the responsible Department.
98. In its response to this query, DFP highlighted that the linkage between NPA and SPA was one of the core provisions of the Bill and it was a central recommendation of the Hutton Review to respond to trends in increased longevity, options for deferred retirement and increased working lifetimes, and to make public service pension provision sustainable for the long term.
99. From the Assembly research, the Committee noted that the UK Government's main response to concern over the linkage between NPA and SPA was to point out that individuals are not being obliged to work to NPA and that 'if people wish to retire earlier, they can do so and take an actuarially reduced pension...'.<sup>17</sup> However, it was also noted that this approach fails to

15 Correspondence from Minister for Health, Social Services and Public Safety, 19 November 2013, Appendix 3

16 Correspondence from POA, 11 November 2013, Appendix 3

17 Public Service Pensions Act – Consideration of Westminster Legislative Process <http://www.niassembly.gov.uk/Documents/Finance/legislation/Public-Service-Pensions-Bill/assembly-research/C-Research-Paper-Consideration-of-Westminster-Legislative-Process.pdf>

address those circumstances where public servants, who do not wish, or cannot afford, to take early retirement, but find the completion of their duties impossible due to age-related decline. While redeployment from front-line duties to back-office jobs may provide a solution in such cases, the Committee was not offered assurance as to the general practicability of an approach along these lines.

100. In view of the stakeholder concerns around clause 10, the Committee also wrote to the First Minister and deputy First Minister to establish the basis for the Executive's decision of 8 March 2012; in particular, the extent to which it was made aware that any automatic linkage between NPA and SPA in the Bill would pre-empt any future decisions by the Executive in terms of whether the linkage should be maintained when the UK Government's planned increases in the SPA beyond 65 years of age take effect. The Committee had not received a response to its query, however, by the date of agreeing this report.
101. Having regard to the aforementioned evidence, during their final consideration of clause 10 of the Bill on 20 November 2013, a number of members indicated concerns with some of the provisions therein whilst other members considered that further information was needed before a fully informed decision could be made on the provisions. Therefore, **in light of the concerns raised with the provisions in clause 10 setting NPA in primary legislation, the Committee was unable to agree this clause as drafted. In particular, the Committee believes that there is a need for sufficient flexibility to enable evidence-based decisions to be taken at a scheme level on whether certain public service roles, especially that of firefighters, should have a lower NPA than is set in the Bill. As such, the Committee recommends that the Minister of Finance and Personnel tables the necessary amendment to clause 10 at Consideration Stage to provide this flexibility, on the basis that any costs arising from future decisions to vary from parity in this area at a scheme level will be met by the responsible departments.**

#### Consultation provisions

102. A recurring theme from the evidence was the need to ensure that the regulatory powers of DFP, as well as the other responsible authorities/departments, is subject to proportionate safeguards in terms of proper consultation with the affected stakeholders. Members noted that this concern applies to a range of provisions in the Bill, including in clauses 9, 11, 12, 14, 21, 22 and 23, and which include potentially sensitive areas such as valuations, revaluations, the employer cost cap, and retrospective changes. These consultation issues also overlap with the concerns raised by stakeholders that the Bill should include sufficient provision for 'Assembly control and safeguards', which is discussed later in the report.
103. The concerns around consultation were highlighted in evidence from a number of the trade unions, with the argument being made that 'the norm is for DFP to ignore the view of consultees' contrary to the 'Gunning Principles'. For its part, the Department argued that it conducts consultation in the spirit these principles.
104. From its previous scrutiny of the Superannuation Bill, the Committee was aware that the 'Gunning' or 'Sedley' principles setting out requirements for fair consultation have been explicitly adopted by the Court of Appeal in NI. Members have noted previously that the four requirements of consultation were stated as follows:

*"To be proper, consultation must be undertaken at a time when proposals are still at a formative stage; it must include sufficient reasons for particular proposals to allow those consulted to give intelligent consideration and an intelligent response; adequate time must be given for this purpose; and the product of consultation must be conscientiously taken into account when the ultimate decision is taken."*<sup>18</sup>

18 Assembly Research and Information Service, Research Paper: Committee for Finance and Personnel's Report on the Superannuation Bill, 26 September 2012, page 12. <http://www.niassembly.gov.uk/Documents/Reports/Finance/8458.pdf>

105. With this in mind, as part of its scrutiny of the consultation issues, the Committee raised a range of queries with DFP, including:
- Whether the Department is required to consult on the orders that it makes under clause 9 (Revaluation);
  - What justification exists for the powers of direction in clause 11 (Valuations) and why DFP is required to consult only with the Government Actuary under subsection (4);
  - Whether the Department would consider amending clause 12 (Employer cost cap) to include a duty on DFP to consult before making directions and regulations;
  - Why the consultation requirement in clause 21 does not also cover the cross-cutting orders and regulations made by DFP under powers elsewhere in the Bill (e.g. clauses 9, 12 and 31);
  - Whether the absence of a requirement to consult 'with a view to reaching agreement' under clause 21(1) could result in the consultation under that clause being less meaningful; and
  - What safeguards exist to ensure that the consultation reports to the Assembly, under clauses 22 (Procedure for protected elements) and 23 (Procedure for retrospective provision), are laid in sufficient time in advance of Assembly committee consideration of the scheme regulations.
106. The clarification and assurance provided by DFP in response to these queries is detailed in the correspondence at **Appendix 4**. However, the main thrust of the Department's response to these questions was an assurance that it will conduct its consultation in the spirit of the 'Gunning Principles' and that it had given an undertaking at the 'Collective Consultation Working Group' for the Bill that it will consult with employee representatives on its draft directions. Moreover, the Department addressed a concern of the Committee in agreeing that the Minister will bring forward an amendment to require directions and regulations in relation to the employer cost cap, under clause 12, to be subject to consultation with the relevant stakeholders.
107. The Committee also welcomes the assurance provided in the Department's response to the queries regarding the consultation reports under clauses 22 and 23 being laid in sufficient time in advance of Assembly committee consideration of the scheme regulations. In this regard, DFP reminded the Committee that, during Consideration Stage of the Superannuation Bill, the previous DFP Minister stated that 'it would be his Department's intention to lay such a report at the same time as any amending scheme to enable the Assembly to consider all relevant information collectively and before any such scheme comes into operation'. The Department confirmed that the same process would apply under this provision.<sup>19</sup>
108. **Given the concerns raised in the evidence regarding the need for DFP's regulatory powers in the Bill to be tempered with robust consultation requirements, the Committee welcomes both the assurances from the Department that it will follow a good-practice approach in consulting on proposed statutory rules generally and the confirmation that the Minister will table an amendment at Consideration Stage to require DFP directions and regulations under clause 12 to be subject to consultation with the relevant stakeholders. The Committee will, nonetheless, wish to monitor the practical outworking of the DFP commitment and assurances in this area. This will include careful scrutiny – both at the 'SL1' stage in the secondary legislation process and of the reports to be laid before the Assembly under clauses 22 and 23 – of the extent and outcome of the consultation undertaken on proposed regulations arising from the Bill.**

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<sup>19</sup> DFP correspondence, 1 November 2013, Appendix 4

### **Revaluation**

109. Pension benefits accrued in public service schemes are uprated annually to take account of cost of living increases. Clause 9 of the Bill makes provisions that enable DFP to conduct any such valuation to be applied as an order reflecting a percentage increase or decrease referenced to the general level of prices or earnings as it considers appropriate. In correspondence to DFP, the Committee sought clarification on a number of issues in this regard.
110. An issue of particular concern to the Committee was the potential for the order-making powers bestowed on DFP to be applied to the detriment of scheme members if, for example, they did not reflect fully an increase in the Consumer Price Index (CPI). In its response, DFP stated that any methodology applied in respect of a revaluation needs to be reasonable and grounded and would have to prove the relationship between any metric.
111. Following further clarification from DFP, the Committee agreed not to pursue an amendment to clause 9(1)(b) to state that a revaluation be by reference that 'reflects' a change in prices or earnings (or both) in a given period. In this regard, members were mindful that an unintended consequence of such an amendment might be to potentially reduce the scope for agreeing variances at a scheme level to annual rates for revaluation of accrued benefits.

### **Review of Actuarial Valuations and Employer Contributions**

112. As outlined above, clause 13 (Employer contributions in funded schemes) requires that employer contributions in defined benefits schemes with a pension fund – most notably the funded Local Government Pension Scheme (NI) – are set at a level that is sufficient to ensure the solvency of the pension fund and the long-term cost-efficiency of the part of the scheme to which that fund relates. It also requires the pension fund to be subject to actuarial valuation; while subsections (4) to (7) make provision for a person appointed by the responsible authority/department to undertake a review to consider whether the actuarial valuation is in compliance with the scheme regulations, whether it is consistent with other valuations under the scheme, and whether the employer contribution rates were set at the level required.
113. The Committee noted that the Explanatory and Financial Memorandum accompanying the Bill (on page 15) refers to the reviewer as being an 'independent person' undertaking an 'independent verification of the assessment of the scheme's assets and liabilities and to confirm whether appropriate employer contributions will be paid to meet those liabilities'. However, it was also noted that clause 13 does not appear to include specific provision to ensure the independence of the appointed person. Whilst members acknowledged that the term 'appropriately qualified' in subsection (7) could be interpreted as implying independence, this was not deemed to be sufficiently clear.
114. On raising this issue with DFP officials during oral evidence on 16 October 2013, the Committee was assured that the Department would consider enhancing the provisions in clause 13 to make it 'absolutely clear' that the person appointed to undertake the review is independent. However, in its subsequent written response of 1 November 2013, DFP appeared not to be prepared to table an amendment to enhance the independence of the person appointed stating that 'this is a technical exercise where financial or actuarial expertise is the primary requirement rather than independence'. As a consequence, at its meeting on 6 November 2013, the Committee agreed that an amendment would be drafted for consideration, which would aim to ensure the independence of the person appointed to review the actuarial valuation and employer contribution rates.
115. At its meeting on 13 November, the Committee considered the following wording of a draft amendment to clause 13, subsection (7), of the Bill:

Clause 13, Page 9, Line 20

After 'qualified' insert-

'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.'

116. To inform the Committee's consideration, DFP officials provided an initial view on the draft amendment, advising that, while they did not consider it necessary, it did not detract from the thrust of the legislation. The Departmental officials also undertook to respond promptly with any follow up views on the matter as applicable; however, no further advice was received from DFP on the issue.
117. The Committee agreed that the amendment, as drafted, will be tabled at Consideration Stage. It was also agreed to update the Environment Committee of developments arising from the deliberations on the clauses of the Bill which are relevant to the remit of the Department of the Environment. In conclusion, **the Committee recommends to the Assembly that the following amendment is made to clause 13(7) of the Bill, in order to make explicit the requirement for the person appointed to review the actuarial valuation to be an independent person:**

**Clause 13, Page 9, Line 20**

**After 'qualified' insert-**

**'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.'**

**Information about Benefits**

118. As part of their scrutiny, members noted that clause 14 of the Bill provides for scheme regulations to require scheme managers to provide active pension scheme members with benefit information statements and what must be included in them. In considering the significance of such information and the often technical nature of pensions, the Committee sought DFP's view on a proposal that would amend subsection (6) to require that the DFP directions must aim to ensure that the benefit information statement is provided in such a manner so that the scheme members are reasonably able to understand it.
119. In its response, DFP stated that the purpose of the directions will be to ensure members of all pension schemes are provided with clear and comprehensive information to enable them to understand their pension benefits. Satisfied by this assurance, the Committee agreed not to pursue an amendment.

**Assembly Control and Safeguards**

120. A notable theme from the evidence was the question of whether the Bill provides for sufficient checks and balances in terms of the powers of the responsible authorities/departments and DFP to make changes to the pension schemes under subordinate legislation, including retrospective changes. This issue was raised particularly in relation to clauses 8, 9, 23 and 24 of the Bill, with the stakeholder proposals focusing on requiring the scheme regulations to be subject to the 'affirmative' rather than the 'negative' resolution procedure, the former being regarded as a higher level of Assembly scrutiny and control.

121. In terms of the provisions in the Bill which gave rise to concerns in the evidence, attention was drawn to the powers of DFP under clause 8(2)(b), to make regulations specifying defined benefits schemes other than CARE schemes and, under clause 9, to make orders in relation to the revaluation of the accrued pension of active members of schemes. In addition, concerns were raised by TUS and NIHRC in relation to: clause 23, which provides a procedure to be followed when retrospective provisions are included within scheme regulations proposed by the relevant authority/department; and, in particular, with clause 24 which requires the affirmative resolution procedure for scheme regulations amending primary legislation or making retrospective amendments that appear to the responsible authority to have significant adverse effects in relation to scheme members, but which applies the negative resolution procedure in any other case.
122. In a follow up written submission of 11 November 2013, ICTU (NIC) reiterated its view that the affirmative resolution process provides better scope for the trade unions to engage with the Assembly on issues of concern. ICTU (NIC) stated that:
- ‘Given the lack of application by DFP of the Wolfe/Gunning principles we have serious concerns as to what may transpire once the Bill receives its Royal Assent, unless it contains the necessary safeguards.’<sup>20</sup>*
123. In response to the stakeholder concerns, DFP has advised that it considers that the negative resolution procedure is applied appropriately in the Bill, that it is the commonly employed mechanism for pension scheme regulations and ‘that it allows appropriate Assembly scrutiny of the provisions of regulations and the chance to debate those regulations if the Assembly wishes to do so.’<sup>21</sup> The Department has also pointed out that general use of the affirmative resolution procedure would see a considerable increase in the number of issues requiring plenary time which might be of a minor or technical nature. In addition, as alluded to above, DFP contends that it adheres to the ‘Gunning Principles’ for proper consultation with relevant stakeholders, including TUS.
124. In considering the arguments in relation to Assembly control and safeguards, members were aware that statutory rules made under negative resolution procedure have the effect of law as soon as the ‘comes into operation’ date is reached. Such statutory rules can be annulled by the Assembly within the statutory period, 30 calendar days or 10 sitting days from the date that the rule is laid in the Assembly Business Office (whichever is longer). For it to be annulled a Member or a committee must table a motion known as a prayer of annulment in the Business Office for debate in the Assembly and the Assembly must vote in favour. Whereas, a statutory rule subject to affirmative procedure is made, printed, laid before the Assembly and shall not come into operation unless affirmed by the Assembly following a debate and vote on a motion from the responsible Minister proposing that the rule be affirmed by the Assembly.
125. The Committee had previous experience of examining the respective merits of the affirmative and negative resolution procedures from its scrutiny of the Superannuation Bill in 2012. In that context, it was noted that a case could be made for affirmative resolution based on the numbers of people affected by changes to the compensation scheme and the relevance to public spending (a consideration that also applies in the case of public service pensions). Also, the affirmative approach would address the theoretical risk that scheme changes could be bought into operation by the Department before the Committee had an opportunity to table a plenary motion for annulment “praying against” the scheme changes. In terms of the negative resolution procedure, the Committee had also called on DFP to provide an assurance that it will observe the practice of the “21 Day Rule”, whereby any future compensation scheme changes will not come into operation until at least 21 calendar days after being laid

20 Correspondence from ICTU (NIC), 11 November 2013, Appendix 3

21 DFP correspondence, 23 September 2013, Appendix 4



in the Assembly. The purpose of this is to allow time for scrutiny before the scheme changes come into operation.<sup>22</sup>

126. In light of the concerns raised by TUS and NIHRC regarding sufficient safeguards in the Bill for cases where retrospective changes (particularly reductions) to accrued benefits are proposed, the Committee obtained independent legal advice from Assembly Legal Services. Following legal advice, five possible options were identified for improving clause 23/24 to help address some of the stakeholder concerns. While the Department rejected each of these, at its meeting on 13 November 2013, the Committee deliberated on the wording of options for draft amendments to clause 24, subsection (1), paragraph (b) of the Bill, which would have required the affirmative resolution procedure either for all retrospective changes or for retrospective changes which are considered to have any adverse effect (as opposed to any significant adverse effect). It was considered that the latter approach may focus on the changes more likely to be in dispute and would take account of the DFP argument that the Assembly is unlikely to wish to have plenary time taken up by minor and non-controversial scheme changes. Following further deliberation, however, no consensus was reached on the Committee on pursuing an amendment in this regard.
127. **Arising from its consideration of whether the Bill provides for sufficient checks and balances on departments' powers to make pension scheme changes under subordinate legislation, the Committee recognises that there is a balance to be struck in terms of requiring the higher level of Assembly scrutiny, in the form of affirmative resolution, for subordinate legislation dealing with more substantive and potentially controversial issues, while avoiding the inefficient use of plenary time in debating minor or routine changes. Members are also mindful that, under the negative resolution procedure, committees or individual Members would have the option to table a plenary motion for annulment 'praying against' scheme changes which have given rise to concerns.**
128. **In this regard, the Committee would recommend that stakeholders, including the trade unions, who have concerns with any future scheme changes ensure that these are brought to the attention of the applicable Assembly committee at the earliest opportunity. In addition, the Committee calls for further assurance from DFP that it will observe the '21 day rule' in relation to any proposals which it makes for negative resolution regulations making scheme changes under the provisions of the Bill. The Committee would advise the other applicable Assembly committees to seek similar assurances on this issue from their respective departments.**

#### **Other Issues**

129. In addition to the aforementioned issues, the Committee also raised queries on various other policy aspects of the reforms and on a wide range of drafting points in terms of the detail of the Bill. The Department provided helpful clarification and assurances on many of these issues and the full information is included at **Appendix 4**. The following section outlines some of the main areas covered in this regard.
130. In advance of the formal introduction of the Bill to the Assembly, DFP had confirmed that it would undertake an equality screening exercise to identify any potential impact to the groups defined under section 75 of the NI Act 1998. However, during follow up oral evidence sessions with TUS, the Committee noted concerns over DFP's decision not to conduct a full EQIA and members therefore sought information on the work that the Department had undertaken to arrive at its decision.
131. In response, DFP provided a copy of the equality screening exercise and acknowledged that the reforms will have minor impacts on age and gender. However, in respect of age, the

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22 The '21 day rule' is the rule of practice whereby a department should, in the case of statutory rules subject to the negative resolution procedure, allow at least 21 calendar days between the laying of the statutory rule and the date on which it comes into operation in order to provide time for scrutiny.

Department determined that such impacts would be mitigated as a result of the transitional protection measures incorporated within the Bill. In addressing the impacts on gender, DFP stated that women have a higher life expectancy than men and, whilst men typically earn more, the introduction of the CARE model will provide for a fairer and more proportionate method of calculating pension provision.<sup>23</sup> For its part, TUS rejected the DFP arguments and contended that, given the fundamental nature of the changes, a full EQIA should have been undertaken.

132. Following its call for evidence, the Committee received a written submission from the Equality Commission which was broadly content that DFP's screening exercise had followed its guidance. It noted the work undertaken in advance of the introduction of the Bill, welcomed the transitional protection measures to mitigate the impact of the reforms and welcomed the DFP commitment to carry out further analytical work at the policy implementation stage. As highlighted earlier in this report, the Equality Commission also raised concern around the potential for existing inequalities to be exacerbated by significant reductions in departmental budgets as a result of any failure by the Executive to implement the public sector pension reforms in NI. On the basis of this submission from the Equality Commission, the Committee was assured as to the equality issues raised previously in the evidence.

133. At its meeting on 23 October 2013, the Committee noted correspondence from the Chairperson of the Independent Financial Review Panel (IFRP), a body established to make determinations in relation to the salaries, allowances and pensions payable to members of the NI Assembly. IFRP highlighted its concern that, as drafted, clauses 30 – 32 could be interpreted as seeking to give DFP power over the NI Assembly Members Pensions Scheme which would contravene the statutory powers afforded to IFRP.

134. In follow up correspondence to the Committee, DFP explained that:

*'Clauses 30, 31 and 32 of the Bill deal with additional schemes for existing schemes for public bodies and new schemes which would be established for those public bodies in the future. As the Assembly Scheme is neither a public body or a new scheme it is outside these definitions.'*<sup>24</sup>

DFP also explained that, during the scoping stage of pension reform, the Assembly Commission confirmed that IFRP had advised that it intended to review the Assembly Members Pension Scheme that falls within its remit in light of the wider review of public sector schemes and reviews of the equivalent schemes in Westminster and the National Assembly for Wales. DFP provided an assurance that it is content with this approach and accepted that the scheme is outside the remit of the Bill. The Committee welcomes this clarification and assurance which the Department has provided to IFRP.

135. In raising a range of queries with drafting aspects of the Bill, the Committee questioned DFP on the provision in clause 9, subsection (4), paragraph (b) which provides the Department with an order-making power to 'make different provisions for different purposes' in relation to revaluations. In response to the Committee's query as to why this provision is required, the Department explained that the policy intent is to provide the flexibility to give effect to different agreements on revaluation made with representatives of members of different schemes and examples were provided of how this might be applied. While DFP also explained that the provision in clause 9(4)(b) could be omitted because of the existing provisions of section 17 of the Interpretation Act (NI) 1954, the Committee was content with the clarification provided and, on this basis, did not pursue an amendment in this regard.

136. **As a result of its detailed scrutiny of the text of the Bill, the Committee identified a minor typographical error in clause 14(1), line 24, and members welcome the Department's subsequent agreement to table an amendment at Consideration Stage to rectify this error.**

23 Official Report of the oral evidence from DFP 24 April 2013: <http://www.niassembly.gov.uk/Assembly-Business/Official-Report/Committee-Minutes-of-Evidence/Session-20122013/April-2013/Public-Sector-Pensions-Bill-Consultation-Responses>

24 DFP correspondence, 1 November 2013, Appendix 4

## Clause-by-Clause Consideration of the Bill

137. Having reviewed the substantial body of written and oral evidence received on the Bill, the Committee deliberated on the clauses and schedule to the Bill at its meeting on 13 November 2013 and undertook its formal clause-by-clause scrutiny of the Bill at its meeting on 20 November 2013. The Committee carried out formal clause-by-clause consideration of the Bill as follows:<sup>25</sup>

**Clause 1: Schemes for persons in public service.**

Agreed: that the Committee is content with clause 1 as drafted.

**Clause 2: Responsible authority for schemes.**

Agreed: that the Committee is content with clause 2 as drafted.

**Clause 3: Scheme regulations.**

Agreed: that the Committee is content with clause 3 as drafted.

**Clause 4: Scheme manager.**

Agreed: that the Committee is content with clause 4 as drafted.

**Clause 5: Pension board.**

Agreed: that the Committee is content with clause 5, subject to the Minister tabling an amendment at Consideration Stage, as undertaken, to replace 'must' with 'may' at subsection (2), line 6.

**Clause 6: Pension board: information.**

Agreed: that the Committee is content with clause 6 as drafted.

**Clause 7: Scheme advisory board.**

Agreed: that the Committee is content with clause 7 as drafted.

**Clause 8: Types of scheme.**

Agreed: that the Committee is content with clause 8 as drafted.

**Clause 9: Revaluation.**

Agreed: that the Committee is content with clause 9 as drafted, though it was noted that Mr McLaughlin, Ms Fearon and Mr McCallister wished to reserve their position on the clause.

**Clause 10: Pension age.**

During the deliberations on this clause, some members raised concerns with some of the provisions therein whilst other members required additional information.

Agreed: to seek an update from DFP on any developments in the negotiations on future pension arrangements for firefighters in Scotland, which might provide a model for the firefighters scheme in NI; particularly in terms of flexibilities for early departure with minimal actuarial reductions for firefighters aged between 55 – 60 years who are unable to maintain the operational fitness standards.

Agreed: that the Committee could not agree clause 10 as drafted.

<sup>25</sup> An extract from the Minutes of Proceedings of the Committee for Finance and Personnel meeting on 30 January 2013, Appendix 1

**Clauses 11: Valuations**

Agreed: that the Committee is content with clause 11 as drafted.

**Clauses 12: Employer Cost Cap**

Agreed: that the Committee is content with clause 12, subject to the Minister tabling an amendment at Consideration Stage, as undertaken, to include further provisions to the effect that DFP directions and regulations may only be made after DFP has consulted with the relevant stakeholders.

**Clause 13: Employer contributions in funded schemes.**

Agreed: that the Committee is content with clause 13 subject to the following proposed Committee amendment which the Chairperson will table at Consideration Stage:

Clause 13, Page 9, Line 20

After 'qualified' insert-

'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.'

**Clause 14: Information about benefits.**

Agreed: that the Committee is content with clause 14, subject to the Minister tabling an amendment at Consideration Stage, as undertaken, to insert 'a' after 'which is' at subsection (1), line 24.

**Clause 15: Information about schemes.**

Agreed: that the Committee is content with clause 15 as drafted.

**Clause 16: Records.**

Agreed: that the Committee is content with clause 16 as drafted.

**Clause 17: Regulatory oversight.**

Agreed: that the Committee is content with clause 17 as drafted.

**Clause 18: Restriction of existing pension schemes.**

Agreed: that the Committee is content with clause 18 as drafted.

**Clause 19: Closure of existing injury and compensation schemes.**

Agreed: that the Committee is content with clause 19 as drafted.

**Clause 20: Final salary link.**

Agreed: that the Committee is content with clause 20 as drafted.

**Clause 21: Consultation.**

Agreed: that the Committee is content with clause 21 as drafted.

**Clause 22: Procedure for protected elements.**

Agreed: that the Committee is content with clause 22 as drafted.

**Clause 23: Procedure for retrospective provision.**

Agreed: that the Committee is content with clause 23 as drafted, though it was noted that Mr Bradley wished to reserve his position on the clause.

**Clause 24: Other procedure.**

Agreed: that the Committee is content with clause 24 as drafted, though it was noted that Mr Bradley, Mr McLaughlin and Ms Fearon wished to reserve their position on the clause.

**Clause 25: Extension of schemes.**

Agreed: that the Committee is content with clause 25 as drafted.

**Clause 26: Non-scheme benefits.**

Agreed: that the Committee is content with clause 26 as drafted.

**Clause 27: Consequential and minor amendments.**

Agreed: that the Committee is content with clause 27 as drafted.

**Clause 28: Existing local government scheme.**

Agreed: that the Committee is content with clause 28 as drafted.

**Clause 29: Existing schemes for civil servants: extension of access.**

Agreed: that the Committee is content with clause 29 as drafted.

**Clause 30: New public body pension schemes.**

Agreed: that the Committee is content with clause 30 as drafted.

**Clause 31: Power to restrict other existing public body pension schemes.**

Agreed: that the Committee is content with clause 31 as drafted.

**Clause 32: Existing public body pension schemes: pension age.**

During its consideration of this clause, the Committee invited the following DFP officials to come to the table to clarify the Department's response to an issue raised previously by the Committee:

Grace Nesbitt, Head of Pensions Division, Corporate HR;

Stephen Ball, Policy and Legislation, Civil Service Pensions, Corporate HR.

Agreed: that the Committee is content with clause 32 as drafted, though it was noted that Mr McLaughlin and Ms Fearon wished to reserve their position on the clause.

**Clause 33: General interpretation.**

Agreed: that the Committee is content with clause 33 as drafted.

**Clause 34: Regulations, orders and directions.**

Agreed: that the Committee is content with clause 34 as drafted.

**Clause 35: Financial provision.**

Agreed: that the Committee is content with clause 35 as drafted.

**Clause 36: Commencement.**

*Agreed:* that the Committee is content with clause 36 as drafted.

**Clause 37: Short title.**

*Agreed:* that the Committee is content with clause 37 as drafted.

**Schedule 1: Persons in Public Service: Definitions**

*Agreed:* that the Committee is content with schedule 1 as drafted.

**Schedule 2: Responsible Authorities**

*Agreed:* that the Committee is content with schedule 2 as drafted

**Schedule 3: Scope of Scheme Regulations: Supplementary Matters**

*Agreed:* that the Committee is content with schedule 3 as drafted.

**Schedule 4: Regulatory Oversight**

*Agreed:* that the Committee is content with schedule 4 as drafted.

**Schedule 5: Existing Pension Schemes**

*Agreed:* that the Committee is content with schedule 5 as drafted.

**Schedule 6: Existing Injury and Compensation Schemes**

*Agreed:* that the Committee is content with schedule 6 as drafted.

**Schedule 7: Final Salary Link**

*Agreed:* that the Committee is content with schedule 7 as drafted.

**Schedule 8: Consequential and Minor Amendments**

*Agreed:* that the Committee is content with schedule 8 as drafted.

**Schedule 9: Existing Schemes for Civil Servants: Extension of Access**

*Agreed:* that the Committee is content with schedule 9 as drafted.

**Long Title of the Bill** – “A Bill to make provision for public service pension schemes; and for connected purposes.”

*Agreed:* that the Committee is content with the Long Title of the Bill.

138. **In summary, the Committee is content with the provisions in the Bill as drafted, aside from:**

- **clauses 5 (Pension board), 12 (Employer cost cap) and 14 (Information about benefits), for which the Department has undertaken to table amendments to address issues identified by stakeholders and the Committee;**
- **clause 13 (Employer contributions in funded schemes), for which the Committee will table an amendment; and**
- **clause 10 (Pension age), which the Committee could not agree as drafted due to the aforementioned concerns.**

**This report on the Bill, which includes supplementary policy recommendations, is issued to inform the contributions of Assembly Members to the Consideration Stage debate.**



Northern Ireland  
Assembly

Appendix 1

# Minutes of Proceedings (Extracts)





## Wednesday, 09 January 2013

### Room 30, Parliament Buildings

**Present:** Mr Daithí McKay MLA (Chairperson)  
Mr Dominic Bradley MLA (Deputy Chairperson)  
Mrs Judith Cochrane MLA  
Mr Leslie Cree MBE MLA  
Ms Megan Fearon MLA  
Mr Paul Girvan MLA  
Mr John McCallister MLA  
Mr David McIlveen MLA  
Mr Mitchel McLaughlin MLA  
Mr Peter Weir MLA

**In Attendance:** Mr Shane McAteer (Assembly Clerk)  
Mrs Kathy O'Hanlon (Assistant Assembly Clerk)  
Mrs Clairita Frazer (Assistant Assembly Clerk)  
Mr Jim Nulty (Clerical Supervisor)  
Ms Heather Graham (Clerical Officer)  
Mr Gavin Moore (Bursary Student)  
Mr Hugh Widdis (Director of Assembly Legal Services)  
(Agenda Item 4 only)

**10:05am** The meeting opened in public session.

**Agreed:** that Agenda items 5 & 6 are recorded by Hansard and the Official Report published on the Assembly website.

**10:55am** The meeting moved into public session.

#### **5. Public Service Pensions Bill – Evidence from DFP Officials**

The Committee took oral evidence from Grace Nesbitt, Head of Pensions Division, CHR; Blathnaid Smyth, Civil Service Pensions, CHR; and Stephen Ball, Civil Service Pensions, CHR. The evidence session was recorded by Hansard.

**11:02am** Mr McLaughlin returned to the meeting.

**11:10am** Mr Weir left the meeting.

**11:19am** Mr Weir returned to the meeting.

Mr Bradley declared an interest as a member of the Northern Ireland Teachers' Pension Scheme.

**11:27am** Mr Bradley left the meeting.

**11:27am** Mr McIlveen left the meeting.

**Agreed:** that DFP will provide additional information as requested during the oral evidence session.

**Agreed:** that briefings on the proposed Bill will be scheduled with DFP and the relevant trade unions once the public consultation has concluded and that background research will be commissioned from Assembly Research.

**12:39pm** The Chairperson adjourned the meeting.

**Mr Daithí McKay MLA**

Chairperson

Committee for Finance and Personnel

16 January 2013

**[EXTRACT]**

## Wednesday, 23 January 2013

### Room 30, Parliament Buildings

**Present:** Mr Daithí McKay MLA (Chairperson)  
Mr Dominic Bradley MLA (Deputy Chairperson)  
Mrs Judith Cochrane MLA  
Mr Leslie Cree MBE MLA  
Ms Megan Fearon MLA  
Mr Paul Girvan MLA  
Mr John McCallister MLA  
Mr David McIlveen MLA  
Mr Mitchel McLaughlin MLA  
Mr Peter Weir MLA

**In Attendance:** Mr Shane McAteer (Assembly Clerk)  
Mrs Kathy O'Hanlon (Assistant Assembly Clerk)  
Mr Jim Nulty (Clerical Supervisor)

**Apologies:** Mr Adrian McQuillan MLA

**10:24am** The meeting opened in public session.

**Agreed:** that Agenda item 6 is recorded by Hansard and the Official Report published on the Assembly website.

#### **9. Committee Work Programme**

The Committee noted correspondence from DFP on the policy consultation on the Public Service Pensions Bill.

**Agreed:** to schedule a briefing on the outcome of the consultation, following its completion.

**11:39am** The Chairperson adjourned the meeting.

#### **Mr Daithí McKay MLA**

Chairperson

Committee for Finance and Personnel

30 January 2013

**[EXTRACT]**

## Wednesday, 30 January 2013

### Room 30, Parliament Buildings

**Present:** Mr Daithí McKay MLA (Chairperson)  
Mrs Judith Cochrane MLA  
Mr Leslie Cree MBE MLA  
Ms Megan Fearon MLA  
Mr Paul Girvan MLA  
Mr John McCallister MLA  
Mr David McIlveen MLA  
Mr Mitchel McLaughlin MLA  
Mr Adrian McQuillan MLA  
Mr Peter Weir MLA

**In Attendance:** Mr Shane McAteer (Assembly Clerk)  
Mrs Kathy O'Hanlon (Assistant Assembly Clerk)  
Mr Jim Nulty (Clerical Supervisor)  
Ms Heather Graham (Clerical Officer)  
Mr Gavin Moore (Bursary Student)  
Mrs Patricia Casey (Bill Clerk) (Agenda Item 4 only)  
Mr Simon Kelly (Assistant Legal Adviser) (Agenda Item 4 only)

**Apologies:** Mr Dominic Bradley MLA (Deputy Chairperson)

**10:05am** The meeting opened in public session.

*Agreed:* that Agenda items 4, 5 and 6 are recorded by Hansard and the Official Report published on the Assembly website.

#### 6. **Committee Work Programme**

*Agreed:* that DFP would be invited to brief the Committee following the conclusion of the policy consultation on the Public Service Pensions Bill.

The Committee noted that there was a range of key stakeholders to obtain evidence from in relation to the Bill, e.g. the Police Federation, and the Fire Brigades Union.

*Agreed:* that the Clerk will liaise with the relevant statutory committees to establish arrangements for co-ordinating scrutiny of the Bill.

**11:32am** The Chairperson adjourned the meeting.

#### **Mr Daithí McKay MLA**

Chairperson  
Committee for Finance and Personnel

6 February 2013

**[EXTRACT]**

## Wednesday, 20 February 2013

### Room 29 Parliament Buildings

**Present:** Mr Daithí McKay MLA (Chairperson)  
Mr Dominic Bradley MLA (Deputy Chairperson)  
Mr Leslie Cree MBE MLA  
Ms Megan Fearon MLA  
Mr Paul Girvan MLA  
Mr David McIlveen MLA  
Mr Mitchel McLaughlin MLA  
Mr Adrian McQuillan MLA  
Mr Peter Weir MLA

**In Attendance:** Mr Shane McAteer (Assembly Clerk)  
Mrs Clairita Frazer (Assistant Assembly Clerk)  
Mrs Kathy O'Hanlon (Assistant Assembly Clerk)  
Mr Jim Nulty (Clerical Supervisor)  
Ms Heather Graham (Clerical Officer)  
Mr Gavin Moore (Bursary Student)

**10:05am** In the absence of the Chairperson, the Deputy Chairperson opened the meeting in public session.

#### **5. Committee Work Programme**

Public Service Pensions Bill

*Agreed:* the Committee will take evidence from Trade Union representatives on the Public Service Pensions Bill at its meeting on 27 February 2013. The Committee will copy a DFP briefing paper and correspondence relating to the Public Service Pensions Bill to the Trade Union representatives for information in advance of the meeting.

**10:31am** The Chairperson adjourned the meeting.

#### **Mr Daithí McKay MLA**

Chairperson  
Committee for Finance and Personnel

27 February 2013

**[EXTRACT]**

## Wednesday, 27 February 2013

### Room 30 Parliament Buildings

**Present:**

Mr Daithí McKay MLA (Chairperson)  
Mr Dominic Bradley MLA (Deputy Chairperson)  
Mrs Judith Cochrane MLA  
Mr Leslie Cree MBE MLA  
Ms Megan Fearon MLA  
Mr Paul Girvan MLA  
Mr David McIlveen MLA  
Mr Mitchel McLaughlin MLA  
Mr Adrian McQuillan MLA  
Mr Peter Weir MLA

**In Attendance**

Mr Shane McAteer (Assembly Clerk)  
Mrs Clairita Frazer (Assistant Assembly Clerk)  
Mrs Kathy O'Hanlon (Assistant Assembly Clerk)  
Mr Jim Nulty (Clerical Supervisor)  
Ms Heather Graham (Clerical Officer)  
Mr Gavin Moore (Bursary Student)  
Dr Robert Barry (Senior Research Officer) (*Agenda item 5 only*)

**10:06am** The meeting opened in public session.

#### 4. **Public Service Pensions Bill – Evidence from Trade Union Representatives**

The following trade union representatives joined the meeting to give evidence on the forthcoming Public Service Pensions Bill: Bumper Graham, Northern Ireland Public Service Alliance (NIPSA); John O'Farrell, Irish Congress of Trade Unions; Jim Quinn, Fire Brigades Union (FBU); Brian Ferguson, UNISON; Nuala O'Donnell, Irish National Teachers' Organisation; and Harry Baird, First Division Association. The session was recorded by Hansard.

**10:09am** Mr McQuillan joined the meeting.

**10:12am** Mr Girvan joined the meeting.

**10:23am** Ms Fearon left the meeting.

**10:27am** Ms Fearon returned to the meeting.

**10:39am** Mrs Cochrane joined the meeting.

**10:42am** Mr Weir left the meeting.

**10:53am** Mr McIlveen left the meeting.

**10:54am** Mr Weir returned to the meeting.

**10:55am** Mr McIlveen returned to the meeting.

**Agreed:** the FBU will provide the Committee with a copy of its response to the related GB consultation on pension reforms.

**Agreed:** the collective trade union response to the DFP consultation will be provided to the Committee when completed.

**Agreed:** the Committee will seek further information from DFP on a number of issues, including: a comprehensive list of all pension schemes and associated stakeholders that will be affected by the Bill and the implications it will have

for each scheme; how the drafting of secondary legislation will be sequenced in relation to the primary legislation; and full details of how the potential cost of £262m per annum to the Northern Ireland block grant from a failure to implement the reforms has been calculated and whether this will be a HM Treasury imposed figure.

**12:32pm** The Chairperson adjourned the meeting.

**Mr Daithí McKay MLA**

Chairperson

Committee for Finance and Personnel

6 March 2013

**[EXTRACT]**

## Wednesday, 13 March 2013

### Room 30, Parliament Buildings

**Present:** Mr Daithí McKay MLA (Chairperson)  
Mr Leslie Cree MBE MLA  
Ms Megan Fearon MLA  
Mr Paul Girvan MLA  
Mr John McCallister MLA  
Mr David McIlveen MLA  
Mr Mitchel McLaughlin MLA  
Mr Adrian McQuillan MLA  
Mr Peter Weir MLA

**In Attendance:** Mr Shane McAteer (Assembly Clerk)  
Mrs Kathy O'Hanlon (Assistant Assembly Clerk)  
Mrs Clairita Frazer (Assistant Assembly Clerk)  
Mr Jim Nulty (Clerical Supervisor)  
Ms Heather Graham (Clerical Officer)

**Apologies:** Mr Dominic Bradley MLA (Deputy Chairperson)

**10:04am** The meeting opened in public session.

*Agreed:* that Agenda item 4 is recorded by Hansard and the Official Report published on the Assembly website.

#### **7. Correspondence**

The Committee noted the following items of correspondence:

- DFP: Public Pensions and Government Actuary's Department assumptions;

**11:48am** The Chairperson adjourned the meeting.

#### **Mr Daithí McKay MLA**

Chairperson  
Committee for Finance and Personnel

20 March 2013

**[EXTRACT]**



## Wednesday, 10 April 2013

### Room 30, Parliament Buildings

**Present:** Mr Daithí McKay MLA (Chairperson)  
Mr Dominic Bradley MLA (Deputy Chairperson)  
Mrs Judith Cochrane MLA  
Mr Leslie Cree MBE MLA  
Ms Megan Fearon MLA  
Mr Paul Girvan MLA  
Mr John McCallister MLA  
Mr David McIlveen MLA  
Mr Mitchel McLaughlin MLA  
Mr Adrian McQuillan MLA  
Mr Peter Weir MLA

**In Attendance:** Mr Shane McAteer (Assembly Clerk)  
Mrs Kathy O'Hanlon (Assistant Assembly Clerk)  
Mrs Clairita Frazer (Assistant Assembly Clerk)  
Mr Jim Nulty (Clerical Supervisor)  
Ms Heather Graham (Clerical Officer)

**Apologies:** None.

**10:06am** The meeting opened in public session.

*Agreed:* that Agenda items 4 and 5 are recorded by Hansard and the Official Report published on the Assembly website.

#### 6. **Correspondence**

The Committee noted the following items of correspondence:

- DFP: Public Service Pensions Reform Bill response;

*Agreed:* to copy the Departmental response to the Trade Union delegation in advance of their scheduled briefing on 24 April.

**11:17am** The Chairperson adjourned the meeting.

#### **Mr Daithí McKay MLA**

Chairperson

Committee for Finance and Personnel

17 April 2013

**[EXTRACT]**

## Wednesday, 24 April 2013

### Room 30, Parliament Buildings

**Present:** Mr Daithí McKay MLA (Chairperson)  
Mr Dominic Bradley MLA (Deputy Chairperson)  
Mrs Judith Cochrane MLA  
Mr Leslie Cree MBE MLA  
Ms Megan Fearon MLA  
Mr Paul Girvan MLA  
Mr John McCallister MLA  
Mr David McIlveen MLA  
Mr Mitchel McLaughlin MLA  
Mr Peter Weir MLA

**In Attendance:** Mr Shane McAteer (Assembly Clerk)  
Mrs Kathy O'Hanlon (Assistant Assembly Clerk)  
Mrs Clairita Frazer (Assistant Assembly Clerk)  
Mr Jim Nulty (Clerical Supervisor)  
Ms Heather Graham (Clerical Officer)  
Mr Gavin Moore (Bursary Student)

**Apologies:** Mr Adrian McQuillan MLA

**10:05am** The meeting opened in public session.

*Agreed:* that Agenda items 4, 5 and 6 are recorded by Hansard and the Official Report published on the Assembly website.

#### 5. **Public Service Pensions Bill – Evidence from Trade Unions**

The Committee took evidence from the following Trade Union (TU) representatives: Bumper Graham, NIPSA; John O'Farrell, Irish Congress of Trade Unions; Martin Toal, UNISON; Nuala O'Donnell, Irish National Teachers' Organisation; Paul Hardy, Prison Officers' Association; Jim Quinn, Fire Brigade Union; and Harry Baird, First Division. The evidence was recorded by Hansard.

**11:34am** Ms Fearon returned to the meeting.

*Agreed:* the TU representatives will respond in writing to any issues raised during the following evidence session with DFP

*Agreed:* TU representatives will return to brief the Committee on the same date that DFP sets out the proposals for the way ahead on the Public Service Pensions Bill.

**11:50am** Mrs Cochrane left the meeting.

**11:50am** Mr Weir left the meeting.

**11:50am** Mr McIlveen left the meeting.

#### 6. **Public Service Pensions Bill – Evidence from DFP**

**11:51am** Mr McIlveen returned to the meeting.

The Committee took evidence from the following DFP officials: Grace Nesbitt, Head of Pensions Division, Corporate HR (CHR); Blathnaid Smyth, Civil Service Pensions, CHR; and Margaret Coyle, Civil Service Pensions, CHR.

**12:18pm** Mr Weir returned to the meeting.

**12:28pm** Mr Weir left the meeting.

**12:28pm** Mr McCallister left the meeting.

**12:31pm** Mr Weir returned to the meeting.

*Agreed:* the DFP officials will provide additional information as requested during the evidence session.

*Agreed:* that the Committee will write to the Department to recommend that a number of measures are taken to more accurately assess the implications of the proposed pension reforms, including the cost of any decisions not to implement the reforms at a scheme level in Northern Ireland and the socio-economic impact of raising the retirement age.

*Agreed:* that the briefing papers received from DFP and other stakeholders are published on the Committee website.

*Agreed:* to write to the other relevant Assembly committees to inform them of the cross-cutting nature of the proposed legislation and provide notification that their views on the Bill will be sought during Committee Stage.

**12:36pm** Mr Bradley left the meeting.

**12:43pm** The Chairperson adjourned the meeting.

**Mr Daithí McKay MLA**

Chairperson

Committee for Finance and Personnel

1 May 2013

**[EXTRACT]**

## Wednesday, 1 May 2013

### Room 30, Parliament Buildings

**Present:** Mr Daithí McKay MLA (Chairperson)  
Mrs Judith Cochrane MLA  
Mr Leslie Cree MBE MLA  
Ms Megan Fearon MLA  
Mr Paul Girvan MLA  
Mr John McCallister MLA  
Mr Mitchel McLaughlin MLA  
Mr Adrian McQuillan MLA  
Mr Peter Weir MLA

**In Attendance:** Mr Shane McAteer (Assembly Clerk)  
Mrs Kathy O'Hanlon (Assistant Assembly Clerk)  
Mrs Clairita Frazer (Assistant Assembly Clerk)  
Mr Jim Nulty (Clerical Supervisor)  
Ms Heather Graham (Clerical Officer)

**Apologies:** Mr Dominic Bradley MLA (Deputy Chairperson)  
Mr David McIlveen MLA

**10:11am** The meeting opened in public session.

*Agreed:* that Agenda items 4 and 5 are recorded by Hansard and the Official Report published on the Assembly website.

### 3. **Matters Arising**

Public Service Pensions Bill

*Agreed:* to issue the letter to the Minister of Finance and Personnel recommending steps to establish a more accurate assessment of the implications of the proposed pension reforms for Northern Ireland.

**11:56am** The Chairperson adjourned the meeting.

#### **Mr Daithí McKay MLA**

Chairperson  
Committee for Finance and Personnel

8 May 2013

**[EXTRACT]**

## Wednesday, 15 May 2013

### Room 30, Parliament Buildings

**Present:** Mr Daithí McKay MLA (Chairperson)  
Mrs Judith Cochrane MLA  
Mr Leslie Cree MBE MLA  
Mr Paul Girvan MLA  
Mr David McIlveen MLA  
Mr John McCallister MLA  
Mr Mitchel McLaughlin MLA  
Mr Peter Weir MLA

**In Attendance:** Mr Shane McAteer (Assembly Clerk)  
Mrs Kathy O'Hanlon (Assistant Assembly Clerk)  
Mrs Clairita Frazer (Assistant Assembly Clerk)  
Mr Jim Nulty (Clerical Supervisor)  
Ms Heather Graham (Clerical Officer)  
Mr Gavin Moore (Bursary Student)

**Apologies:** Mr Dominic Bradley MLA (Deputy Chairperson)  
Ms Megan Fearon MLA  
Mr Adrian McQuillan MLA

**10:16am** The meeting opened in public session.

#### 8. **Correspondence**

The Committee noted the following items of correspondence:

■ **DFP: Public Service Pensions Bill**

*Agreed:* to remind DFP that a response to the Committee's previous correspondence recommending steps to establish more accurate assessment of the implications of the proposed pension reforms for NI will be required in advance of the evidence session on the Bill at next week's meeting.

**12:19pm** The Chairperson adjourned the meeting.

#### **Mr Daithí McKay MLA**

Chairperson  
Committee for Finance and Personnel

22 May 2013

**[EXTRACT]**

## Wednesday, 22 May 2013

### Room 30, Parliament Buildings

**Present:** Mr Dominic Bradley MLA (Deputy Chairperson)  
Mr Leslie Cree MBE MLA  
Ms Megan Fearon MLA  
Mr Paul Girvan MLA  
Mr David McIlveen MLA  
Mr John McCallister MLA  
Mr Mitchel McLaughlin MLA  
Mr Adrian McQuillan MLA  
Mr Peter Weir MLA

**In Attendance:** Mr Shane McAteer (Assembly Clerk)  
Mrs Clairita Frazer (Assistant Assembly Clerk)  
Mr Jim Nulty (Clerical Supervisor)  
Ms Heather Graham (Clerical Officer)

**Apologies:** Mr Daithí McKay MLA (Chairperson)  
Mrs Judith Cochrane MLA

**10:05am** The meeting opened in public session.

#### 4. **Public Service Pensions Bill: Proposals on way forward – DFP evidence session**

*Agreed:* to share the DFP papers for this evidence session with the trade union representatives in advance of the next session.

**10:12am** Mr Weir joined the meeting.

**10:16am** Mr McCallister joined the meeting.

**10:45am** Mr McQuillan joined the meeting.

**10:46am** Mr Weir left the meeting.

**10:49am** Ms Fearon left the meeting.

**10:54am** Mr Weir joined the meeting.

The Committee received a briefing on proposals on the way forward in relation to the Public Service Pensions Bill from the following DFP officials: Grace Nesbitt, Head of Pensions Division; Blathnaid Smyth, Pensions Division, Corporate Human Resources (CHR); and Margaret Coyle, Pensions Division, CHR. The session was recorded by Hansard.

*Agreed:* that the DFP officials would provide follow up information in relation to issues raised during the evidence session.

The Committee noted that other relevant statutory committees have been notified of the impending Committee Stage of this Bill and subsequent secondary legislation and that the Committee for Finance and Personnel would be seeking their views in due course.

**11.00am** Mr McCallister left the meeting.

#### 5. **Public Service Pensions Bill – Trade Union evidence session**

The Committee took evidence from the following trade union representatives: Bumper Graham, Northern Ireland Public Service Alliance (NIPSA); John O'Farrell, Irish Congress of

Trade Unions; Nuala O'Donnell, Irish National Teachers' Organisation; Jim Quinn, Fire Brigades Union; and Harry Baird, First Division. The session was recorded by Hansard.

**11:06am** Ms Fearon joined the meeting.

**11:28am** Mr Weir left the meeting.

**11:57am** Mr McLaughlin left the meeting.

*Agreed:* that the trade unions will provide the Committee with a copy of the correspondence they received from the Equality Commission regarding the proposed Bill.

*Agreed:* that written submissions on the proposed Bill are sought, at this stage, from the Equality Commission and the Northern Ireland Human Rights Commission.

*Agreed:* that the Committee will review the issues raised in today's evidence sessions and identify which matters require further examination and responses from the Department.

**12:18pm** The Chairperson adjourned the meeting.

**Mr Daithí McKay MLA**

Chairperson

Committee for Finance and Personnel

29 May 2013

**[EXTRACT]**

## Wednesday, 12 June 2013

### Room 3.08 Management Suite, North West Regional College

**Present:** Mr Daithí McKay MLA (Chairperson)  
Mr Dominic Bradley MLA (Deputy Chairperson)  
Mrs Judith Cochrane MLA  
Mr Paul Girvan MLA  
Mr John McCallister MLA  
Mr Mitchel McLaughlin MLA  
Mr Adrian McQuillan MLA

**In Attendance:** Mr Shane McAteer (Assembly Clerk)  
Mr Phil Pateman (Assistant Assembly Clerk)  
Mr Jim Nulty (Clerical Supervisor)

**Apologies:** Mr Leslie Cree MBE MLA  
Ms Megan Fearon MLA  
Mr David McIlveen MLA  
Mr Peter Weir MLA

**10:24am** The meeting opened in public session.

#### **4. Public Service Pensions Bill – Pre-introductory written briefing from DFP**

The Committee noted pre-introductory written briefing from DFP on the forthcoming Public Service Pensions Bill, due to be introduced to the Assembly on 17 June 2013.

*Agreed:* that the briefing papers are copied to the relevant statutory committees for information, given the cross-cutting nature of the Bill.

*Agreed:* that the Committee will consider the options relating to a macroeconomic appraisal of the policy aims of the Bill at its meeting on 19 June 2013.

**12:15pm** The Chairperson adjourned the meeting.

#### **Mr Daithí McKay MLA**

Chairperson

Committee for Finance and Personnel

19 June 2013

**[EXTRACT]**



## Wednesday, 19 June 2013

### Room 30 Parliament Buildings

**Present:** Mr Daithí McKay MLA (Chairperson)  
Mrs Judith Cochrane MLA  
Ms Megan Fearon MLA  
Mr Paul Girvan MLA  
Mr Leslie Cree MBE MLA  
Mr John McCallister MLA  
Mr David McIlveen MLA  
Mr Mitchel McLaughlin MLA  
Mr Adrian McQuillan MLA  
Mr Peter Weir MLA

**In Attendance:** Mr Shane McAteer (Assembly Clerk)  
Mrs Clairita Frazer (Assistant Assembly Clerk)  
Mr Phil Pateman (Assistant Assembly Clerk)  
Mr Jim Nulty (Clerical Supervisor)  
Ms Heather Graham (Clerical Officer)

**Apologies:** Mr Dominic Bradley MLA (Deputy Chairperson)

**10:10am** The meeting opened in public session.

### 3. **Matters Arising**

Public Service Pensions Bill: “Macro Economic” Appraisal - Options

The Committee considered options relating to a macroeconomic appraisal of the policy aims of the Public Service Pensions Bill.

**10:16am** Mr McQuillan joined the meeting.

**Agreed:** that, given the substantive nature of the issues to consider, the Committee would defer its decision on the options until next week’s meeting.

**Agreed:** to take evidence from the Nevin Economic Research Institute at a future meeting.

**Agreed:** to seek an update from Trade Union Side on its preparedness to support the commissioning of a macroeconomic appraisal.

**11:43am** The Chairperson adjourned the meeting.

### **Mr Daithí McKay MLA**

Chairperson

Committee for Finance and Personnel

26 June 2013

**[EXTRACT]**

## Wednesday, 26 June 2013

### Room 29 Parliament Buildings

**Present:** Mr Daithí McKay MLA (Chairperson)  
Mrs Judith Cochrane MLA  
Ms Megan Fearon MLA  
Mr Paul Girvan MLA  
Mr Leslie Cree MBE MLA  
Mr John McCallister MLA  
Mr Adrian McQuillan MLA  
Mr Peter Weir MLA

**In Attendance:** Mr Shane McAteer (Assembly Clerk)  
Mr Phil Pateman (Assistant Assembly Clerk)  
Mr Jim Nulty (Clerical Supervisor)  
Ms Heather Graham (Clerical Officer)

**Apologies:** Mr Dominic Bradley MLA (Deputy Chairperson)  
Mr David McIlveen MLA  
Mr Mitchel McLaughlin MLA

**10:17am** The meeting opened in public session.

#### **7. Public Service Pensions Bill – Assembly Research Briefing**

The Committee noted a briefing paper from Assembly Research entitled Public Service Pensions Bill.

*Agreed:* that the Delegated Powers Memorandum relating to the Bill, which had been received from DFP, is forwarded to the Examiner of Statutory Rules for scrutiny.

*Agreed:* that the signposting notice on the Committee Stage “call for evidence” is printed in the three main regional papers and that the detailed information on the “call for evidence” is published on the Committee’s website.

#### **8. Public Service Pensions Bill – Consideration of options on “Macro-economic Appraisal”**

The Committee gave further consideration to the options regarding the absence of a macroeconomic appraisal of the policy aims of the Public Service Pensions Bill.

*Agreed:* to write to Trade Union Side requesting that any work undertaken by it in respect of an appraisal is forwarded to the Committee at the earliest opportunity during the Committee Stage of the Bill for consideration.

**12:52pm** The Chairperson adjourned the meeting.

**Mr Daithí McKay MLA**

Chairperson

Committee for Finance and Personnel

3 July 2013

**[EXTRACT]**

## Wednesday, 11 September 2013

### Room 30, Parliament Buildings

**Present:** Mr Daithí McKay MLA (Chairperson)  
Mr Dominic Bradley MLA (Deputy Chairperson)  
Mrs Judith Cochrane MLA  
Mr Leslie Cree MBE MLA  
Ms Megan Fearon MLA  
Mr Paul Girvan MLA  
Mr John McCallister MLA  
Mr David McIlveen MLA  
Mr Mitchel McLaughlin MLA  
Mr Adrian McQuillan MLA  
Mr Peter Weir MLA

**In Attendance:** Mr Shane McAteer (Assembly Clerk)  
Mrs Clairita Frazer (Assistant Assembly Clerk)  
Mr Phil Pateman (Assistant Assembly Clerk)  
Mr Jim Nulty (Clerical Supervisor)  
Ms Heather Graham (Clerical Officer)

**10:07am** The meeting opened in public session.

**7. Public Service Pensions Bill – Consideration of written submissions**

The Committee gave initial consideration to the written submissions which were received from a range of stakeholders in response to the call for evidence on the Bill.

*Agreed:* that the written submissions are forwarded to DFP for an urgent written response to each of the issues/proposals raised by the stakeholders.

**8. Public Service Pensions Bill – Consideration of Committee Stage Timetable**

*Agreed:* that the motion seeking Assembly approval to extend the Committee Stage of the Bill to Friday 29 November 2013 will be laid in the Business Office; and that oral evidence will be scheduled from the stakeholders who have made written submissions.

**11:39am** The Chairperson adjourned the meeting.

**Mr Daithí McKay MLA**

Chairperson

Committee for Finance and Personnel

18 September 2013

**[EXTRACT]**

## Wednesday, 02 October 2013

### Room 30, Parliament Buildings

**Present:** Mr Dominic Bradley MLA (Deputy Chairperson)  
Mrs Judith Cochrane MLA  
Mr Leslie Cree MBE MLA  
Mr Paul Girvan MLA  
Mr John McCallister MLA  
Mr Ian McCrea MLA  
Mr Mitchel McLaughlin MLA

**In Attendance:** Mr Shane McAteer (Assembly Clerk)  
Mr Phil Pateman (Assistant Assembly Clerk)  
Mrs Clairita Frazer (Assistant Assembly Clerk)  
Mr Jim Nulty (Clerical Supervisor)  
Ms Heather Graham (Clerical Officer)

**Apologies:** Mr Daithí McKay MLA  
Mr Peter Weir MLA

**10:12am** The meeting opened in public session.

#### 4. **Public Service Pensions Bill – Assembly Research Briefing**

The Committee received a briefing from Assembly Research and Information Service on the Research paper, Public Service Pensions Bill.

**10:17am** Ian McCrea joined the meeting.

**10:18am** Judith Cochrane joined the meeting.

**10:35am** Paul Girvan left the meeting.

#### 5. **Public Service Pensions Bill – Northern Ireland Human Rights Commission Evidence Session**

The Committee took evidence from the following representatives of the Northern Ireland Human Rights Commission on the Public Service Pensions Bill:

- Dr David Russell, Deputy Director; and
- Ms Rhyannon Blythe BL, Assistant Caseworker.

The session was recorded by Hansard.

**10:47am** Paul Girvan rejoined the meeting.

**Agreed:** to write to DFP seeking information on what research has been done or can be done to provide a cost-benefit analysis specifically on the implications of Northern Ireland not aligning the Normal Pension Age with the State Pension Age.

**10:59am** The Deputy Chairperson adjourned the meeting.

#### **Mr Dominic Bradley MLA**

Deputy Chairperson  
Committee for Finance and Personnel

09 October 2013

**[EXTRACT]**

## Wednesday, 09 October 2013

### Room 30, Parliament Buildings

**Present:** Mr Daithí McKay (Chairperson)  
Mr Dominic Bradley MLA (Deputy Chairperson)  
Mrs Judith Cochrane MLA  
Ms Megan Fearon MLA  
Mr Paul Girvan MLA  
Mr John McCallister MLA  
Mr Ian McCrea MLA  
Mr Mitchel McLaughlin MLA  
Mr Adrian McQuillan MLA  
Mr Peter Weir MLA

**In Attendance:** Mr Shane McAteer (Assembly Clerk)  
Mr Phil Pateman (Assistant Assembly Clerk)  
Mrs Clairita Frazer (Assistant Assembly Clerk)  
Mr Jim Nulty (Clerical Supervisor)  
Ms Heather Graham (Clerical Officer)

**Apologies:** Mr Leslie Cree MBE MLA

**10:09am** The meeting opened in public session.

#### 4. **Public Service Pensions Bill – Evidence from the Fire Brigades Union**

**Agreed:** to seek a written response from the Department to drafting queries relating to provisions in the Bill.

The Committee received took evidence on the Public Service Pensions Bill from the following representatives of the Fire Brigades Union:

- Jim Barbour, UK Vice President;
- Matt Wrack, General Secretary;
- Jim Quinn, Regional Secretary;
- Sean Starbuck, National Pensions Officer.

The session was recorded by Hansard.

**10:21am** Mr McLaughlin left the meeting.

**10:24am** Mr McLaughlin rejoined the meeting.

**10:40am** Mr McCallister joined the meeting.

**11:00am** Mr Weir left the meeting.

**11:10am** Mr Girvan left the meeting.

**11:11am** Mr Weir rejoined the meeting.

**11:12am** Mr Girvan rejoined the meeting.

**11:19am** Mr McCallister left the meeting.

**11:20am** Mr McCallister rejoined the meeting.

**11:19am** Mrs Cochrane left the meeting.

*Agreed:* that further questions would be forwarded to the witnesses for written response as required.

**5. Public Service Pensions Bill – Evidence from the National Association of Schoolmasters Union of Women Teachers (NASUWT)**

The Committee took evidence on the Public Service Pensions Bill from the following representatives from NASUWT:

- Dave Wilkinson - NASUWT National Negotiating Official;
- Seamus Searson - NASUWT Northern Ireland Organiser;
- Justin McCamphill – Junior Vice President of NASUWT NI & Serving Northern Ireland Teacher.

The session was recorded by Hansard.

Dominic Bradley declared an interest as a former teacher, former member of a teachers' union and current member of the Northern Ireland Teachers Pension Scheme.

John McCallister declared an interest as his wife is employed as a teacher.

**11:26am** Mr McCrea left the meeting.

**11:29am** Ms Fearon left the meeting.

**11:42am** Mr McCrea rejoined the meeting.

**11:42am** Ms Fearon rejoined the meeting.

**11:44am** Mr McQuillan left the meeting.

**11:45am** Mr McQuillan rejoined the meeting.

**12:04pm** Ms Fearon left the meeting.

**12:04pm** Mr Bradley left the meeting.

**6. Public Service Pensions Bill – Evidence from the Northern Ireland Public Service Alliance (NIPSA) and the Irish Congress of Trade Unions – Northern Ireland Committee (ICTU (NIC))**

The Committee took evidence from the following representatives from NIPSA and ICTU (NIC) on the Public Service Pensions Bill.

- Bumper Graham, Deputy Secretary NIPSA;
- John O'Farrell, Union Representative, ICTU (NIC);
- Gareth Scott, Union Representative, Unite;
- Nuala O'Donnell, Union Representative, Irish National Teachers Organisation (INTO); and
- Harry Baird, Union Representative, First Division Association (FDA).

The session was recorded by Hansard.

**12:12pm** Mr Bradley rejoined the meeting.

**12:23pm** Mr Weir left the meeting.

**12:25pm** Mr McCallister left the meeting.

**12:30pm** Mr Weir rejoined the meeting.

**12:45pm** Mr McLaughlin left the meeting.

**12.45pm** Mr Girvan left the meeting.

**12:46pm** Mr Bradley left the meeting.

*Agreed:* that the witnesses will provide follow up information as discussed during the session, including urgent written responses to issues identified by the Committee which were not explored in the evidence sessions.

*Agreed:* that, arising from the concerns identified in last week's evidence from the Northern Ireland Human Rights Commission in relation to the legal certainty of clause 23 of the Bill, the Clerk will enquire whether Assembly Legal Services could offer advice to inform the Committee's consideration of this matter.

**12:48pm** The Chairperson adjourned the meeting.

**Mr Daithí McKay MLA**

Chairperson

Committee for Finance and Personnel

16 October 2013

**[EXTRACT]**

## Wednesday, 16 October 2013

### Room 30, Parliament Buildings

**Present:** Mr Daithí McKay (Chairperson)  
Mr Dominic Bradley MLA (Deputy Chairperson)  
Mr Leslie Cree MBE MLA  
Ms Megan Fearon MLA  
Mr Paul Girvan MLA  
Mr John McCallister MLA  
Mr Mitchel McLaughlin MLA  
Mr Adrian McQuillan MLA  
Mr Peter Weir MLA

**In Attendance:** Mr Shane McAteer (Assembly Clerk)  
Mr Phil Pateman (Assistant Assembly Clerk)  
Mrs Clairita Frazer (Assistant Assembly Clerk)  
Mr Jim Nulty (Clerical Supervisor)  
Ms Heather Graham (Clerical Officer)

**Apologies:** Mrs Judith Cochrane

**10:07am** The meeting opened in public session.

#### 3. **Matters Arising**

Legal Advice on Public Service Pensions Bill

The Committee discussed the possibility of Assembly Legal Services providing background advice on issues raised in relation to clause 23 of the Public Service Pensions Bill. Further discussion on the matter would take place later in the meeting.

#### 4. **Public Service Pensions Bill – Evidence from the Nevin Economic Research Institute**

The Committee received evidence on the Public Service Pensions Bill from the following representative from the Nevin Economic Research Institute (NERI):

- Mr Paul MacFlynn – Researcher, NERI

The session was recorded by Hansard.

**10:12am** Adrian McQuillan joined the meeting.

**10:15am** Peter Weir joined the meeting.

**10:19am** 10.18am Paul Girvan left the meeting and rejoined.

#### 5. **Public Service Pensions Bill – Evidence from the British Medical Association**

The Committee took evidence on the Public Service Pensions Bill from the following representatives from the British Medical Association (BMA):

- Dr Paul Darragh – Chairman of the NI Council, BMA;
- Mr Andy Blake – Head of Pensions Department, BMA

The session was recorded by Hansard.

**10:22am** John McCallister joined the meeting.



**6. Public Service Pensions Bill – Evidence from Northern Ireland Local Government Association**

In advance of this session, Peter Weir declared an interest as a member of the Northern Ireland Local Government Association (NILGA).

The Committee took evidence on the Public Service Pensions Bill from the following representatives from NILGA.

- Alderman Arnold Hatch, President of NILGA;
- Mr John Adams, Head of Workforce, NILGA.

The session was recorded by Hansard.

**10:55am** Megan Fearon left the meeting.

**11:00am** Peter Weir left the meeting.

**11:02am** Peter Weir rejoined the meeting.

**7. Public Service Pensions Bill – Evidence from DFP**

The Committee took evidence on the Public Service Pensions Bill from the following DFP officials:

- Ms Grace Nesbitt - Head of Pensions Division, CHR;
- Ms Blathnaid Smyth – Civil Service Pensions, CHR;
- Ms Margaret Coyle – Civil Service Pensions, CHR.

The session was recorded by Hansard.

*Agreed:* that, in order to inform the Committee's deliberations on the Bill at next week's meeting, DFP officials will respond to various issues identified during the session and to follow up queries highlighted by the Chairperson.

*Agreed:* to commission legal advice from Assembly Legal Services in relation to clause 23 of the Bill in advance of next week's meeting.

**12:30pm** The Chairperson adjourned the meeting.

**Mr Daithí McKay MLA**

Chairperson

Committee for Finance and Personnel

23 October 2013

**[EXTRACT]**

## Wednesday, 23 October 2013

### Room 30, Parliament Buildings

**Present:** Mr Daithí McKay MLA (Chairperson)  
Mr Dominic Bradley MLA (Deputy Chairperson)  
Mrs Judith Cochrane MLA  
Mr Leslie Cree MBE MLA  
Mr John McCallister MLA  
Mr Ian McCrea MLA  
Mr Mitchel McLaughlin MLA  
Mr Adrian McQuillan MLA  
Mr Peter Weir MLA

**In Attendance:** Mr Shane McAteer (Assembly Clerk)  
Mr Phil Pateman (Assistant Assembly Clerk)  
Mrs Clairita Frazer (Assistant Assembly Clerk)  
Mr Jim Nulty (Clerical Supervisor)  
Ms Heather Graham (Clerical Officer)

**Apologies:** Ms Megan Fearon MLA  
Mr Paul Girvan MLA

**10:08am** The meeting opened in public session.

#### 1. Apologies

Apologies are detailed above.

*Agreed:* that agenda items 4, 7 and 8 are recorded by Hansard and the Official Report published on the Assembly's website.

*Agreed:* that the Table of Issues in respect of the Public Service Pensions Bill is provided to the DFP officials for information in advance of the forthcoming evidence session on the Bill.

**10:09am** Ian McCrea joined the meeting.

#### 3. Matters Arising

Public Service Pensions Bill

*Agreed:* that correspondence from the Fire Brigades Union would be sent to DFP for urgent response.

#### 5. Public Service Pensions Bill – Follow up Assembly Research Briefing

The Committee received a follow up briefing from Assembly Research and Information Service on the Research paper, Public Service Pensions Act – Consideration of Westminster Legislative Process.

*Agreed:* that the Researcher will provide a follow up response to issues discussed during the briefing.

*Agreed:* to forward correspondence from the Independent Financial Review Panel for the Northern Ireland Assembly to DFP for response.

**11:02am** The Committee moved into closed session in line with normal convention.

## 6. **Public Service Pensions Bill – Legal and Procedural Advice**

Members received a briefing from Kiera McDonald, Assembly Legal Adviser, and Patricia Casey, Bill Clerk, on clause 23 of the Public Service Pensions Bill.

*Agreed:* to seek a written response from DFP on suggested options for improving the legal certainty in respect of clause 23 of the Bill.

**11:13am** Adrian McQuillan left the meeting.

**11:14am** Adrian McQuillan rejoined the meeting.

**11:39am** Judith Cochrane joined the meeting.

**11:39am** The Committee returned to open session.

## 7. **Public Service Pensions Bill – Evidence from DFP Officials**

The Committee took evidence on the Public Service Pensions Bill from the following DFP officials:

- Ms Margaret Coyle – Pensions Division, CHR;
- Mr Stephen Ball, Pensions Division, CHR.

The session was recorded by Hansard.

**11:47am** Peter Weir left the meeting.

**11:50am** John McCallister left the meeting.

**11:50am** Peter Weir rejoined the meeting.

**11:56am** Judith Cochrane left the meeting.

**11:57am** Judith Cochrane rejoined the meeting.

**11:59am** Dominic Bradley left the meeting.

**12:30pm** Ian McCrea left the meeting.

**12:42pm** Ian McCrea rejoined the meeting.

*Agreed:* that the DFP officials will provide urgent responses to issues raised during the evidence session as well as a written response to issues identified during the evidence session of 16 October and issues sent in follow up.

## 8. **Public Service Pensions Bill – Consideration of Issues from the Evidence**

*Agreed:* that due to the number of issues for which written responses from DFP are still outstanding, this session would be postponed until the next meeting of the Committee.

**12:47pm** The Chairperson adjourned the meeting.

**Mr Daithí McKay MLA**

Chairperson

Committee for Finance and Personnel

06 November 2013

**[EXTRACT]**

## Wednesday, 6 November 2013

### Room 30, Parliament Buildings

**Present:** Mr Daithí McKay MLA (Chairperson)  
Mr Dominic Bradley MLA (Deputy Chairperson)  
Mrs Judith Cochrane MLA  
Mr Leslie Cree MBE MLA  
Mr Paul Girvan MLA  
Mr John McCallister MLA  
Mr Mitchel McLaughlin MLA  
Mr Peter Weir MLA

**In Attendance:** Mr Shane McAteer (Assembly Clerk)  
Mr Phil Pateman (Assistant Assembly Clerk)  
Mrs Clairita Frazer (Assistant Assembly Clerk)  
Mr Jim Nulty (Clerical Supervisor)  
Ms Heather Graham (Clerical Officer)

**Apologies:** Mr Ian McCrea MLA

**10:04am** The meeting opened in public session.

**Agreed:** that agenda items 4 and 5 are recorded by Hansard and the Official Report published on the Assembly's website.

### 3. **Matters Arising**

#### Public Service Pensions Bill

The Committee noted a follow-up research paper on Opposition amendments relating to special provision for firefighters, which were proposed to the equivalent GB legislation during the Westminster legislative process.

**Agreed:** that the Chairperson will write to the First Minister and deputy First Minister to seek clarification as to the basis for the Executive decision of 8 March 2010<sup>2</sup> on public service pensions; in particular, the extent to which it was made aware of the consequences of any automatic linkage between 'normal pension age' and State Pension Age in the Bill in terms of future decisions in this regard.

#### Reduction in NICS Pensions Staff

**Agreed:** that DFP officials will provide a written submission to the Committee on the possible reduction of Northern Ireland Civil Service (NICS) Pensions staff in Derry/Londonderry and implications of same.

### 4. **Public Service Pensions Bill – Evidence from DFP**

**10:13am** Paul Girvan joined the meeting.

**10:13am** Peter Weir left the meeting.

**10:16am** Peter Weir rejoined the meeting.

The Committee received evidence on the Public Service Pensions Bill from the following DFP officials:

- Grace Nesbitt, Pensions Division, CHR;
- Blathnaid Smyth; Civil Service Pensions, CHR;

- Margaret Coyle; Civil Service Pensions, CHR;
- Stephen Ball, Civil Service Pensions, CHR.

The session was recorded by Hansard.

*Agreed:* that the Committee will write to the Department of Health, Social Services and Public Safety requesting information on: the options for firefighters to retire early with actuarial reduction; whether there is scope for “unfit” firefighters to transfer to other parts of the public service; and the turnover of firefighters.

*Agreed:* that the DFP officials will provide urgent clarification on issues discussed during the evidence session.

*Agreed:* to forward the DFP response regarding clauses 30-32 of the Bill to the Independent Financial Review Panel for its information.

**10:29am** Judith Cochrane joined the meeting.

**11:08am** Dominic Bradley left the meeting.

**5. Public Service Pensions Bill – Consideration of issues from Evidence**

The Committee considered residual issues in respect of clauses 7, 9, 10, 13, 14, 21, 22, 23 and 24 of the Bill and discussed the potential for drafting amendments to address the issues where concerns remained.

The session was recorded by Hansard.

*Agreed:* that draft amendments in relation to clauses 13 and 23/24 will be prepared for consideration at the next Committee meeting.

**11:34pm** The Chairperson adjourned the meeting.

**Mr Daithí McKay MLA**

Chairperson

Committee for Finance and Personnel

13 November 2013

**[EXTRACT]**

## Wednesday, 13 November 2013

### Room 30, Parliament Buildings

**Present:** Mr Daithí McKay MLA (Chairperson)  
Mr Dominic Bradley MLA (Deputy Chairperson)  
Mrs Judith Cochrane MLA  
Mr Leslie Cree MBE MLA  
Mr Paul Girvan MLA  
Mr John McCallister MLA  
Mr Ian McCrea MLA  
Mr Mitchel McLaughlin MLA  
Mr Adrian McQuillan MLA  
Mr Peter Weir MLA

**In Attendance:** Mr Shane McAteer (Assembly Clerk)  
Mr Phil Pateman (Assistant Assembly Clerk)  
Mrs Clairita Frazer (Assistant Assembly Clerk)  
Mr Jim Nulty (Clerical Supervisor)  
Ms Heather Graham (Clerical Officer)

**Apologies:** Ms Megan Fearon MLA

**10:11am** The meeting opened in public session.

*Agreed:* that agenda items 4, 5 and 6 are recorded by Hansard and the Official Report published on the Assembly's website.

#### **4. Public Service Pensions Bill – Consideration of Draft Amendments and Issues Outstanding**

Arising from its meeting on 6 November 2013, the Committee deliberated on a number of issues outstanding and on potential draft amendments in relation to clauses 9, 10, 13 and 24 of the Bill.

The Committee noted follow up correspondence from DFP and a further submission from ICTU (NIC). The session was recorded by Hansard.

The following DFP officials were in attendance and provided clarification to the Committee on issues identified with the draft amendments:

- Grace Nesbitt, Head of Pay and Pensions Division;
- Stephen Ball, Pay and Pensions Division.

The Committee considered the following wording of a draft amendment to clause 13, subsection (7), of the Bill:

Clause 13, Page 9, Line 20

After 'qualified' insert-

'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.'

**Agreed:** that the amendment, as drafted, will be tabled at Consideration Stage and that this decision will be reflected in the Committee's formal clause-by-clause consideration and report on the Bill.

**Agreed:** to update the Environment Committee of developments arising from the deliberations on the clauses of the Bill which are relevant to the remit of the Department of the Environment.

The Committee deliberated on the wording of options for draft amendments to clause 24, subsection (1), paragraph (b) of the Bill.

Mr McLaughlin proposed the following amendment to clause 24(1)(b):

Clause 24, Page 13, Line 36

Leave out paragraph (b) and insert-

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

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

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

Question put

The Committee divided: Ayes 4; Noes 5; Abstentions 0

#### **AYES**

Mr Bradley, Mrs Cochrane, Mr McKay and Mr McLaughlin

#### **NOES**

Mr Cree, Mr Girvan, Mr McCrea, Mr McQuillan and Mr Weir

Question accordingly negatived.

The Committee also considered the wording of a draft amendment to clause 9, subsection (1), paragraph (b) of the Bill.

**Agreed:** that the Committee is content with the clarification provided by DFP on this issue and will not pursue the potential amendment to clause 9(1)(b) of the Bill.

**12:02pm** The Deputy Chairperson adjourned the meeting.

#### **Mr Daithí McKay MLA**

Chairperson

Committee for Finance and Personnel

20 November 2013

**[EXTRACT]**

## Wednesday, 20 November 2013

### Room 30, Parliament Buildings

**Present:** Mr Dominic Bradley MLA (Deputy Chairperson)  
Mrs Judith Cochrane MLA  
Ms Megan Fearon MLA  
Mr Paul Girvan MLA  
Mr John McCallister MLA  
Mr Ian McCrea MLA  
Mr Mitchel McLaughlin MLA  
Mr Adrian McQuillan MLA

**In Attendance:** Mr Shane McAteer (Assembly Clerk)  
Mr Phil Pateman (Assistant Assembly Clerk)  
Mrs Clairita Frazer (Assistant Assembly Clerk)  
Mr Jim Nulty (Clerical Supervisor)  
Ms Heather Graham (Clerical Officer)

**Apologies:** Mr Leslie Cree MBE, MLA  
Mr Peter Weir MLA

**11:35am** The meeting commenced in public session, in the absence of the Chairperson the Deputy Chairperson took the chair.

*Agreed:* that agenda item 5 is recorded by Hansard and the Official Report published on the Assembly's website.

#### **4. Public Service Pensions Bill – Consideration on Issues Outstanding**

The Committee noted correspondence from the Minister of Health, Social Services and Public Safety, providing the information sought previously by the Committee in relation to provisions in clause 10 of the Bill. It was noted that a response had not yet been received to the correspondence issued to the First Minister and deputy First Minister in this regard.

**11:45am** Judith Cochrane left the meeting.

**11:51am** Michel McLaughlin left the meeting.

**11:53am** Mitchel McLaughlin rejoined the meeting.

#### **5. Public Service Pension Bill – Clause-by-Clause Scrutiny**

The Committee carried out formal clause-by-clause consideration of the Public Service Pensions Bill as follows:

##### **Clause 1: Schemes for persons in public service.**

*Agreed:* that the Committee is content with clause 1 as drafted.

##### **Clause 2: Responsible authority for schemes.**

*Agreed:* that the Committee is content with clause 2 as drafted.

##### **Clause 3: Scheme regulations.**

*Agreed:* that the Committee is content with clause 3 as drafted.

##### **Clause 4: Scheme manager.**

*Agreed:* that the Committee is content with clause 4 as drafted.



**12:05pm** John McCallister joined the meeting.

**Clause 5: Pension board.**

*Agreed:* that the Committee is content with clause 5, subject to the Minister tabling an amendment at Consideration Stage, as undertaken, to replace 'must' with 'may' at subsection (2), line 6.

**Clause 6: Pension board: information.**

*Agreed:* that the Committee is content with clause 6 as drafted.

**Clause 7: Scheme advisory board.**

*Agreed:* that the Committee is content with clause 7 as drafted.

**Clause 8: Types of scheme.**

*Agreed:* that the Committee is content with clause 8 as drafted.

**Clause 9: Revaluation.**

*Agreed:* that the Committee is content with clause 9 as drafted, though it was noted that Mr McLaughlin, Ms Fearon and Mr McCallister wished to reserve their position on the clause.

**Clause 10: Pension age.**

During the deliberations on this clause, some members raised concerns with some of the provisions therein whilst other members required additional information.

*Agreed:* to seek an update from DFP on any developments in the negotiations on future pension arrangements for firefighters in Scotland, which might provide a model for the firefighters scheme in Northern Ireland; particularly in terms of flexibilities for early departure with minimal actuarial reductions for firefighters aged between 55 – 60 years who are unable to maintain the operational fitness standards.

*Agreed:* that the Committee could not agree clause 10 as drafted.

**Clauses 11: Valuations**

*Agreed:* that the Committee is content with clause 11 as drafted.

**Clauses 12: Employer Cost Cap**

*Agreed:* that the Committee is content with clause 12, subject to the Minister tabling an amendment at Consideration Stage, as undertaken, to include further provisions to the effect that DFP directions and regulations may only be made after DFP has consulted with the relevant stakeholders.

**Clause 13: Employer contributions in funded schemes.**

*Agreed:* that the Committee is content with clause 13 subject to the following proposed Committee amendment which the Chairperson will table at Consideration Stage:

**Clause 13, Page 9, Line 20**

After 'qualified' insert-

'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.'

**Clause 14: Information about benefits.**

Agreed: that the Committee is content with clause 14, subject to the Minister tabling an amendment at Consideration Stage, as undertaken, to insert 'a' after 'which is' at subsection (1), line 24.

**Clause 15: Information about schemes.**

Agreed: that the Committee is content with clause 15 as drafted.

**Clause 16: Records.**

Agreed: that the Committee is content with clause 16 as drafted.

**Clause 17: Regulatory oversight.**

Agreed: that the Committee is content with clause 17 as drafted.

**Clause 18: Restriction of existing pension schemes.**

Agreed: that the Committee is content with clause 18 as drafted.

**Clause 19: Closure of existing injury and compensation schemes.**

Agreed: that the Committee is content with clause 19 as drafted.

**Clause 20: Final salary link.**

Agreed: that the Committee is content with clause 20 as drafted.

**Clause 21: Consultation.**

Agreed: that the Committee is content with clause 21 as drafted.

**Clause 22: Procedure for protected elements.**

Agreed: that the Committee is content with clause 22 as drafted.

**Clause 23: Procedure for retrospective provision.**

Agreed: that the Committee is content with clause 23 as drafted, though it was noted that Mr Bradley wished to reserve his position on the clause.

**Clause 24: Other procedure.**

Agreed: that the Committee is content with clause 24 as drafted, though it was noted that Mr Bradley, Mr McLaughlin and Ms Fearon wished to reserve their position on the clause.

**Clause 25: Extension of schemes.**

Agreed: that the Committee is content with clause 25 as drafted.

**Clause 26: Non-scheme benefits.**

*Agreed:* that the Committee is content with clause 26 as drafted.

**Clause 27: Consequential and minor amendments.**

*Agreed:* that the Committee is content with clause 27 as drafted.

**Clause 28: Existing local government scheme.**

*Agreed:* that the Committee is content with clause 28 as drafted.

**Clause 29: Existing schemes for civil servants: extension of access.**

*Agreed:* that the Committee is content with clause 29 as drafted.

**Clause 30: New public body pension schemes.**

*Agreed:* that the Committee is content with clause 30 as drafted.

**Clause 31: Power to restrict other existing public body pension schemes.**

*Agreed:* that the Committee is content with clause 31 as drafted.

**Clause 32: Existing public body pension schemes: pension age.**

During its consideration of this clause, the Committee invited the following DFP officials to come to the table to clarify the Department's response to an issue raised previously by the Committee:

- Grace Nesbitt, Head of Pensions Division, CHR;
- Stephen Ball, Policy and Legislation, Civil Service Pensions, CHR.

*Agreed:* that the Committee is content with clause 32 as drafted, though it was noted that Mr McLaughlin and Ms Fearon wished to reserve their position on the clause.

**Clause 33: General interpretation.**

*Agreed:* that the Committee is content with clause 33 as drafted.

**Clause 34: Regulations, orders and directions.**

*Agreed:* that the Committee is content with clause 34 as drafted.

**Clause 35: Financial provision.**

*Agreed:* that the Committee is content with clause 35 as drafted.

**Clause 36: Commencement.**

*Agreed:* that the Committee is content with clause 36 as drafted.

**Clause 37: Short title.**

*Agreed:* that the Committee is content with clause 37 as drafted.

**Schedule 1: Persons in Public Service: Definitions**

*Agreed:* that the Committee is content with schedule 1 as drafted.

**Schedule 2: Responsible Authorities**

*Agreed:* that the Committee is content with schedule 2 as drafted

**Schedule 3: Scope of Scheme Regulations: Supplementary Matters**

*Agreed:* that the Committee is content with schedule 3 as drafted.

**Schedule 4: Regulatory Oversight**

*Agreed:* that the Committee is content with schedule 4 as drafted.

**Schedule 5: Existing Pension Schemes**

*Agreed:* that the Committee is content with schedule 5 as drafted.

**Schedule 6: Existing Injury and Compensation Schemes**

*Agreed:* that the Committee is content with schedule 6 as drafted.

**Schedule 7: Final Salary Link**

*Agreed:* that the Committee is content with schedule 7 as drafted.

**Schedule 8: Consequential and Minor Amendments**

*Agreed:* that the Committee is content with schedule 8 as drafted.

**Schedule 9: Existing Schemes for Civil Servants: Extension of Access**

*Agreed:* that the Committee is content with schedule 9 as drafted.

**Long Title of the Bill** – “A Bill to make provision for public service pension schemes; and for connected purposes.”

*Agreed:* that the Committee is content with the Long Title of the Bill.

**12:20pm** Megan Fearon left the meeting.

**12:25pm** Megan Fearon rejoined the meeting.

**12:32pm** Ian McCrea left the meeting.

**12:44pm** Ian McCrea rejoined the meeting.

The session was recorded by Hansard.

**6. Public Service Pensions Bill – Initial Consideration of Draft Report**

The Committee considered a working draft of its report on the Public Service Pensions Bill.

*Agreed:* that members will forward any comments on the working draft report to the Clerk by close of play on Friday 22 November and that a final draft will be considered at next week’s meeting.

**Mr Daithí McKay MLA**

Chairperson

Committee for Finance and Personnel

27 November 2013

**[EXTRACT]**

## Wednesday, 27 November 2013

### Room 30, Parliament Buildings

**Present:** Mr Daithí McKay MLA (Chairperson)  
Mr Dominic Bradley MLA (Deputy Chairperson)  
Mrs Judith Cochrane MLA  
Mr Leslie Cree MBE, MLA  
Mr Paul Girvan MLA  
Mr John McCallister MLA  
Mr Ian McCrea MLA  
Mr Mitchel McLaughlin MLA  
Mr Adrian McQuillan MLA  
Mr Peter Weir MLA

**In Attendance:** Mr Shane McAteer (Assembly Clerk)  
Mr Phil Pateman (Assistant Assembly Clerk)  
Mrs Clairita Frazer (Assistant Assembly Clerk)  
Mr Jim Nulty (Clerical Supervisor)  
Ms Heather Graham (Clerical Officer)

**Apologies:** Megan Fearon MLA

**10:04am** The meeting commenced in public session.

#### 4. **Public Service Pensions Bill – Final consideration of the Draft Committee Report**

The Committee considered its draft report on the Public Service Pensions Bill as follows:

*Agreed:* that paragraphs 1 – 6 stand part of the Report;

*Agreed:* that paragraphs 7 – 14 stand part of the Report;

*Agreed:* that paragraphs 15 – 61 stand part of the Report;

*Agreed:* that paragraphs 62 – 74 stand part of the Report;

**10:10am** Peter Weir joined the meeting.

*Agreed:* that paragraphs 75 – 83 stand part of the Report;

*Agreed:* that the subtitle before paragraph 84 is amended as agreed;

*Agreed:* that paragraphs 84 – 101 stand part of the Report;

**10:12am** Paul Girvan joined the meeting.

*Agreed:* that paragraphs 102 – 108 stand part of the Report

*Agreed:* that paragraphs 109 – 117 stand part of the Report;

*Agreed:* that paragraphs 118 – 128 stand part of the Report;

*Agreed:* that paragraphs 129 – 136 stand part of the Report;

*Agreed:* that paragraphs 137 – 138 stand part of the Report;

*Agreed:* that the Appendices stand part of the Report;

*Agreed:* that the Executive Summary stands part of the Report.

*Agreed:* that the report (as amended) be the Ninth Report of the Committee for Finance and Personnel to the Assembly for the mandate 2011/15.

*Agreed:* that the extract of the draft minutes of today's meeting relating to the report is marked 'unapproved' and checked by the Chairperson before inclusion in the report.

*Agreed:* that the report on the Public Service Pensions Bill (as amended) be printed.

## **7. Correspondence**

Members noted the following pieces of correspondence:

- Correspondence from the Prison Officers Association regarding the Public Service Pensions Bill.

**10:30am** The Chairperson adjourned the meeting.

### **Mr Daithí McKay MLA**

Chairperson

Committee for Finance and Personnel

04 December 2013

**[EXTRACT]**



Northern Ireland  
Assembly

Appendix 2

# Minutes of Evidence





## 9 January 2013

### Members present for all or part of the proceedings:

Mr Daithí McKay (Chairperson)  
 Mr Dominic Bradley (Deputy Chairperson)  
 Mrs Judith Cochrane  
 Mr Leslie Cree  
 Ms Megan Fearon  
 Mr Paul Girvan  
 Mr John McCallister  
 Mr David McIlveen  
 Mr Mitchel McLaughlin  
 Mr Peter Weir

### Witnesses:

|                     |                              |
|---------------------|------------------------------|
| Mr Stephen Ball     |                              |
| Mrs Grace Nesbitt   | <i>Department of Finance</i> |
| Mrs Blathnaid Smyth | <i>and Personnel</i>         |

1. **The Chairperson:** We have a number of officials from the Department: Stephen Ball and Blathnaid Smyth from Civil Service pensions, and Grace Nesbitt, who will be familiar to some of you; she is the head of corporate HR. Grace, do you want to make a few opening comments?
2. **Mrs Grace Nesbitt (Department of Finance and Personnel):** Yes. That would be helpful. This is the first opportunity that I have had to meet the Committee to discuss the proposed Public Service Pensions Bill specifically. The policy intent and the whole reform issue has come up in the margins of other sessions that I have had with the Committee, but I am conscious that there are some new members. I have, at last, the privilege of being here, so it may be helpful. I will be happy to take questions at the end.
3. There are three key areas that I would like to cover. The first is the context to the Bill, including a little bit of background information and why it is necessary to introduce it. The second is the core provision and the changes that the Bill will propose to introduce, who they will affect and when. The third is the challenge that we are facing in implementing the Bill to the deadline that has been set, including a little bit of information on the timetable. I think that all members will be aware of the potential financial penalty if we do not meet the timetable. Those are the areas that I propose to cover. I trust that that will be helpful.
4. We will look, first of all, at the context and the timeline by way of background to this whole issue. In the March 2010 Budget — three years ago now — the then Westminster Government announced the establishment of the Independent Public Service Pensions Commission, which was chaired by Lord Hutton. He did his work with his team. The final recommendations from that independent commission were published on 10 March. They were accepted in the March 2011 Budget by what was then the new coalition Government at Westminster. I will not go into a lot of detail about why the review was undertaken, because you would not get out of this Building today; possibly not even this year. To put it really simply, at a very high level, the review was undertaken because the cost of pensions was rising and people are living longer. Something had to change. The view was that the current position was simply not tenable in the longer term. That is a very high-level summary.
5. What were the key findings from Lord Hutton's work? First, he said that final salary pension arrangements in the public sector were unsustainable, so there was a need for alternative models that share the cost of pension provision more equitably between public service employees and the taxpayer. The third key point was that the new models should protect the accrued pension rights of current employees. That is a very high-level summary. His report is available if you wish to read it; I can provide copies to members.

6. What the coalition Government then did was engage and consult with all the key unions at national level. On 4 July 2012, the coalition Government announced that, based on the outcome of various ballots of unions for the key schemes — the NHS, teachers, the principal Civil Service pension scheme, etc — they believed they had sufficient support to proceed with a Public Service Pensions Bill in Westminster to implement the recommendations of the Independent Public Service Pensions Commission.

7. What has our position on the matter been in Northern Ireland to date? On 8 March 2012, the Executive agreed to commit to the policy of a new career average revalued earnings scheme — which, of course, gets abbreviated, as these things always do, to CARE — with a pension age linked to state pension age. Those are really the high-level provisions of the Bill. The Executive agreed that that would be adopted for general use in public service pension schemes. On 8 March 2012, the Executive also agreed to adopt this approach consistently for each of the different public service pension schemes, in line with their equivalent scheme in Great Britain, and not to adopt a different approach for Northern Ireland. That was the stance of the Executive on 8 March.

8. As members will again be aware, in the intervening months, we looked at how we would actually give effect to the Executive's decision. There were a couple of options. One was to use the legislative consent motion to avail ourselves of the Westminster Bill. The other was to produce our own Bill. The latter decision was obviously made, which is why I am here. The Executive made that decision on 22 November 2012. It was formally announced in the Assembly on Monday 26 November.

9. I move on to my second key area of change. What is all this about? Who is going to be affected and when? Let us look at the structure that is now required. The Public Service Pensions Bill would be primary legislation, and could be described as a framework Bill.

It will not contain the detail of individual scheme designs for health workers, teachers, civil servants or the various other schemes. The designs for the specific schemes will be set out in their own regulations or scheme rules. So, there is the primary legislation — the Public Service Pensions Bill — and then each scheme will be required, based on the new framework, to produce its own subordinate legislation, which will be the detail of how the change is going to happen for each individual scheme. That is an important point to note at the start. It means that each individual scheme will have flexibility to take account of the individual requirements of their different workforces.

10. What will it actually do? What are the changes? I have already highlighted the key change, and I have set that out in more detail in the written submission I have provided to members. For ease of reference, the key thing is the move from final salary schemes to CARE — I am not going to ask you to remember what it stands for; career average revalued earnings — a direct link to equalised schemes and the linking of normal pension age with state pension age. The exceptions to that are the Police Service and the Fire and Rescue Service. Subject to regular review, the normal pension age of 60 will still exist for the police and the Fire and Rescue Service. There will be transitional protection measures for scheme members who are within 10 years of their normal pension age on 1 April 2012. If you recall, I said at the outset that that was one of the key issues Lord Hutton said he wanted to see addressed. That means that any final salary linked to any final salary pension accrued prior to the date on which the new schemes will commence will be honoured. There will also be a scheme cost cap, including employer limits. That again picks up one of the points Lord Hutton made about balancing out who pays in a fairer way, which is how he described it, between the employee and the employer. There will be an extension of scheme access arrangements. Finally, parts will pick up on looking at the whole governance of

- public service pension schemes, which again was a level of detail that Lord Hutton touched on. So, there will be revised measures for the management, regulation and administration of schemes.
11. Who is going to be affected by all this? What is it going to mean? Hands up; I will be affected, and my colleagues will be, for starters. I will declare that now. However, I am here speaking to you as an official, not as a member of the scheme. The proposed Bill will implement the measures for the following public service employees: civil servants, devolved judiciary workers, local government workers, health service workers, teachers, Fire and Rescue Service workers, and members of the police force. It is important to note that the policy intention behind the reforms is to apply it to the whole of the public sector. It will, for example, include areas like the North/South pension scheme.
  12. When is all this going to happen? The key date for implementation set by the coalition Government is April 2015. As Committee members will probably be aware, the main exception to that is the local government pension scheme. It is being handled differently because it is a different type of scheme. The date for that is April 2014.
  13. The final area that I want to update colleagues on is the challenge. You will have received a copy of the revised timetable to introduce this, and we will continue to update the Committee on those dates. The key challenge is the timing. The key date for all this to be done is April 2015. We need to have the primary legislation in place, and then each scheme has to look at its secondary legislation. We will also have to change our systems in time for April 2015. The consequence of not doing that has been made very clear by the Treasury. You have the figures in your paper; it is estimated that it would cost over £260 million for each year of delay. We suspect that those costs will rise if there are years of delay.
  14. What have we already done to progress this work? The Office of the Legislative Counsel (OLC) has agreed to work on the Bill and to begin to draft it in tandem with the Westminster Bill. The Minister of Finance and Personnel has agreed that, within the Department of Finance and Personnel (DFP), this area of work will be given priority in the legislative programme. OLC has recently advised me that it has been able to secure an additional legal resource to work specifically on this matter, which is certainly very welcome. We have also set up a group of key officials from across all the schemes to begin to work specifically on the Bill. They are due to meet later this month.
  15. Each of the public sector schemes in Northern Ireland has already informed their respective unions of the proposed change. As I said at the start, the unions here are aware of it. Most of them are linked to the national unions in some shape or form and, in that sense, have a presence and are aware that a national consultation has been carried out. This is no surprise to anybody, and it is certainly no surprise to the unions; they are aware of it. I mentioned the pension forum for the Civil Service unions. I can assure you that they are well aware of this matter and are updated on it on a monthly basis. It is a regular item on our agenda.
  16. As I said, the Bill will affect not just the Civil Service; it will apply right across the public sector. DFP will co-ordinate the legislation and the consultation, and I recently wrote to the Northern Ireland Committee, Irish Congress of Trade Unions (NICITU) and invited it to facilitate and help in the process. We also plan to launch a consultation on the issue later this month.
  17. I welcome the opportunity to meet the Committee. I am happy to engage in a very timely way with the Committee on the policy, the consultation and the various scrutiny stages of the Bill and to provide it with an update when required. If you have looked at the timetable, you will have seen that we have very tight deadlines. There is no doubt about that.

- It will be challenging; I am not ducking that at all. I welcome the Committee's comment that it will work constructively to meet the deadline. I think it is fair to say that, since the announcement was made in the Assembly on 26 November, there has been a willingness — I would not say enthusiasm; that is maybe going a bit far — and a commitment from all parties and colleagues across the public service to engage to try to meet the deadline. Nobody wants to incur a financial penalty to the Northern Ireland block. Our aim is to endeavour to avoid that or, at least, to minimise that as much as we possibly can. So, I look forward to working closely with the Committee on the issue over the coming weeks and months. I am happy to take questions.
18. **The Chairperson:** Thank you very much, Grace. I think it is fair to say that, before Christmas, the Minister had painted a very bleak picture. Obviously, as the paper outlines, he saw the primary legislation being passed by January 2015. Now, after Christmas, however, we can do it by April 2014. It is no longer a doomsday scenario, so to speak. Where did those nine months go to in those projections?
19. **Mrs G Nesbitt:** First, we have priority in OLC. We are also doing what could, potentially, be nugatory work for officials and the drafters, because we are beginning to work on the draft legislation before the Westminster Bill is finalised. I can give members a reference to the Westminster website, if you wish to follow it, but, potentially, a number of amendments will be made to the Westminster Bill as it goes through its passage. It has left the House of Commons, and a number of changes were considered there. It is in the House of Lords, and, potentially, there will be a number of changes there. The way to do this to make the best use of our resources would be to wait until we see the Westminster Bill in its final shape. However, that is not what we are doing now. We are trying to work in tandem. Potentially, legislators will be writing things that they will be rubbing
- out a few weeks later, because, given the Executive decision in March last year, our Bill will be modelled on the Westminster Bill. That is the policy decision that was made. That is the first issue.
20. We have also produced a timetable that assumes that decisions are taken at the earliest opportunity. I think that Minister Wilson made that clear; he actually commented that he thought our original timetable was ambitious. That means, for example, that when something goes to the Executive, the decision is taken at the earliest opportunity, with absolutely no delay. I do not have authority over when the Executive consider matters, but I have experience of the time that that can take. My experience has not been that the Executive always consider matters at the first and earliest opportunity. So, I was trying to produce a timetable that was realistic. If you look at the timetable, you will see that it assumes that something that goes to the Executive on 24 June — that is maybe one of the dates — will be decided by the Executive on 24 June. That has not been my experience to date. I was trying to produce a timetable that was realistic.
21. The other key area is that we will be consulting on the policy, and we have taken advice on that. Again, we are consulting ahead of the Westminster Bill. Things could change. We are not going to be consulting on the legislation. As I understand it, the practice on that has varied from taking advice from other officials involved in that area.
22. To answer your question, those are the areas that we have trimmed back on. Is it achievable or is not achievable? I am not going to sit here and say that it is, because I think that it is extremely challenging. I am not going to promise something that I cannot guarantee can be delivered. I think it is extremely challenging.
23. **The Chairperson:** I move now to the exemptions. Obviously, we have the small number of posts for which the pension age will still be 60, and that

- would be subject to ongoing review. Perhaps we could have some discussion about that. Why is it limited to those particular areas? Is it because of the trade union representation, for instance? I know that some had suggested that surgeons should be considered, for example, or posts within the other emergency services, such as the likes of the coastguard.
24. **Mrs G Nesbitt:** The Westminster Bill is modelled on what was recommended by Lord Hutton. He highlighted the retirement age in those areas, for various reasons. If you have been following the Westminster Bill, you will have seen that a number of amendments on that were considered. I suspect that as the Westminster Bill makes its way through the House of Lords, that issue will come up again. From representations that I have seen from various unions and from meeting officials across other Departments, I am certainly aware that the unions have already raised the issue of the retirement age for various schemes. I will not highlight any particular one. I appreciate that it is a sensitive issue. I cannot tell you what the definitive position will be in the Westminster Bill because it has not finished its passage. Our Bill will be modelled on the Westminster Bill.
25. If we in Northern Ireland were to decide to change that in the provisions of our Northern Ireland Bill, we would, first, be going against the Executive's decision of 8 March. That decision has already been made. Secondly, if we were to change something as critical as that, there would be considerable financial implications for us in Northern Ireland. Working longer is obviously a big issue because of the cost, and that was one of the reasons behind the review by Lord Hutton in the first place. If we were to start to vary such things, it would, first, go against the Executive decision, and, secondly, it would mean that we in Northern Ireland collectively would have to pay for that. It would be a very significant change if we decided to
- diverge from what is in the final version of the Westminster Bill.
26. **The Chairperson:** What capacity do we have to vary certain aspects of the Bill that would not incur a financial cost? There will be issues, small and major, on which we will wish to make changes that will not necessarily result in a cost.
27. **Mrs G Nesbitt:** We have scope or opportunity to vary in two areas in Northern Ireland. First, the Executive decision of 8 March made it clear that, in respect of the framework of the primary legislation, we would follow what happens in Westminster. There is considerable scope for variation at secondary legislation stage. Two levels of legislative change are required in implementing this reform. There will be considerable scope around the types of things that could be varied for each scheme, and I am happy to provide the Committee more detail on that in writing. That is important because they can look at their own workforce and at any particular issues that they wish to consider in Northern Ireland. If they do that within the overall cost ceiling of the scheme, there will not be a financial implication. If they decide to vary something that would have a financial implication, there could be a cost. So, there is scope to vary. Most of that scope exists at the secondary legislation stage, and that is an important scope for Ministers with responsibility for the various schemes to have and to consider. The important point is to look at the impact on the bottom line.
28. **The Chairperson:** In a local context, what kind of savings will result from the implementation of this?
29. **Mrs G Nesbitt:** I am not in a position to answer that.
30. **The Chairperson:** Are there figures that you could get?
31. **Mrs G Nesbitt:** If you were to reverse the figures on the costs of not meeting the deadline, you would see that the savings for the first year are, potentially, £260 million across the public sector.

- I would caveat that by saying that that is an estimate. That is a very high-level figure, but, if that is the cost, the saving is the reverse of that.
32. **The Chairperson:** Is that the only figure that you have for the first year?
33. **Mrs G Nesbitt:** It is. It is broken down by each scheme in the submission that I have given to you. The savings will depend very much on how the scheme design pans out, so there are quite a few variables in that. The savings are significant, because the intent behind this is that this is an urgent and costly matter that requires attention.
34. **The Chairperson:** There is a review mechanism, and, over a number of years, life expectancy will vary. How often will there be a review?
35. **Mrs G Nesbitt:** The proposal is that an evaluation will be conducted every three years under the governance arrangements. An evaluation is a very detailed and complex piece of work that is conducted by the Government Actuary's Department. It looks at the costs of running the scheme, and it considers things like life expectancy and the profile of scheme members and all that type of thing. That will inform how that is managed. The high-level proposals for that are set out in the Westminster Bill.
36. **Mr D Bradley:** Good morning. I have to declare an interest as a member of the Northern Ireland teachers' pension scheme, although I am still some way off the official retirement age. *[Laughter.]* One of the advantages of those schemes has been the final salary aspect. The likes of you and I could possibly lose out from that point of view. Are there any provisions to lessen the blow to people who are in the scheme?
37. **Mrs G Nesbitt:** Yes. I have to be careful about disclosing personal information; I will disclose my own but not that of my colleagues. Because I am over a certain age, shall we say, I am in the 10-year transitional protection arrangements. I said at the start that Lord Hutton wanted to protect the accrued rights of members. There are provisions in the Westminster Bill.
38. **Mr Cree:** You are bound to be protected, Dominic.
39. **Mrs G Nesbitt:** I am happy to talk to you personally after the meeting. If you are of a certain age, there are protections for you. It is basically people who were over the age of 50 at April 2012. I am not looking at anybody. There is also a little bit of tapering before that, so there is provision for people who are 46 and a half. So, to answer your question; yes, there is a level of protection, and there is also a level of tiered protection outside the 10-year period, which would apply across all the schemes, irrespective of what scheme you are in.
40. **Mr D Bradley:** You said that there would be revised measures for the management, regulation and administration of the schemes. Can you give us an idea of what that entails?
41. **Mrs G Nesbitt:** I will need to refer to my more detailed notes to answer that. I do not seem to have more information. I can supply the Committee with more information on that. The Bill is quite long; it has 35 clauses. I do not have all the information to hand, but I am happy to follow up in writing on that issue.
42. **Mr D Bradley:** That is grand. Thanks very much.
43. **Mr Girvan:** Thank you very much for coming. It is hoped that the Westminster Bill will receive Royal Assent in May of this year. It will be implemented in full on 5 April 2014. Is that correct?
44. **Mrs G Nesbitt:** No, the Westminster Bill will not be implemented. It is given effect then so it becomes the primary legislation framework. The provisions will have the framework for the secondary legislation. The changes will be implemented on 1 April 2015. It is not 2014. It is necessary to have in place the primary framework before you can really look in detail at the secondary legislation. There are a number of dates to consider.

45. **Mr Girvan:** I appreciate that we were looking at the date of April 2014. If we were not to meet that window, are we restricted from implementing it? Should we miss out by six weeks due to a delay in Committee Stage or through the Executive or whatever, that six-week window could put you over into the next financial year. If it could not be implemented within that current year, would it have to be held back to the following year?
46. **Mrs G Nesbitt:** No. Sorry, that was a bit abrupt, but I would suggest that we do not take that tack. If we made the decision in Northern Ireland that because we cannot implement the reform in April 2015 we would wait until April 2016, we would have a bill of over £260 million from Her Majesty's Treasury. My advice as an official, and the line that our Minister has taken, is that we meet the deadline of April 2015, and if we cannot meet the deadline, we at least get as close to it as possible. I have absolutely no doubt that we will be getting a bill from the Treasury in the form of a daily rate. Therefore, the closer we can get to April 2015, the better. So, our intent is to get to April 2015, but, as I said, the timetable is extremely tight, and any slippage will have a knock-on effect. To be honest, that is my concern.
47. **Mr Girvan:** I appreciate that. A number of us have major concerns that it did not receive the nod through the Assembly at that stage, and about the delay and the potential impact that that will have on us. You have already alluded to the ambitious window in which we are attempting to achieve this and the additional work that is going to be implemented in that.
48. How accurate is the £260 million figure that has been given as a potential cost? We have been looking for information in relation to corporation tax. Treasury has always been very difficult when it comes to giving us direct figures as to what component of corporation tax is raised from Northern Ireland. We are also looking at this. Therefore, how accurate is the figure of £260 million in relation to pensions that are being drawn down into the Civil Service for people who were employed in Northern Ireland?
49. **Mrs G Nesbitt:** First of all, we have to look at the source of that information. It is an estimate. So, the question is: how accurate is an estimate? That work was conducted by the Government Actuary's Department, looking in detail at the health scheme and whether the health scheme here could adopt it. The health scheme is the biggest scheme. There is nothing behind why I am picking the health scheme; it was looked at because it is the scheme with the biggest cost. It looked at what it would mean if the health scheme followed the same line as has been proposed. It came up with a fairly detailed piece of work, and produced a figure of 7% of the pensionable pay bill. So, to get an estimate, officials looked at the pensionable pay bill for the other schemes and did a high-level sum.
50. It is an estimate, and I would emphasise that. That caveat has always been added to that figure. What I would say is that, even if it is 50% wrong, we do not want to lose £130 million from the Northern Ireland block. I do not want to lose a penny. Let me be quite clear about that. Even if the estimate is 50% out, we would lose £130 million; still a huge amount of money, which, in my view we can ill afford to lose. I think we could all agree on that. So, it is an estimate. However, I have no doubt that they will pursue it, and the Treasury and Chief Secretary Danny Alexander have made that clear. The evidence for that can be seen when you look at how the Treasury handled the issue of increased contributions and what would happen if we failed to introduce them in time. We got a bill of £4.6 million a month. Treasury was quite clear that that is what we would be charged. I have absolutely no doubt that the Treasury will take the same stance on this issue. So, it is an estimate. However, based on the source of the estimate, I think that it is a fairly accurate estimate.
51. **Mr Cree:** Thank you for your paper. It is very helpful. Certainly, we all want to

- avoid a cost to the block grant. It works out at £5 a week. I do not know how you got that just so neat.
52. **Mr Mitchel McLaughlin:** Five million pounds. *[Laughter.]*
53. **Mrs G Nesbitt:** Thank you very much, Mr McLaughlin.
54. **Mr Cree:** The GB legislation programme was introduced in September 2012, with Royal Assent expected in May 13; eight months. In Northern Ireland, introduction is in January 2013, with Royal assent expected in April 2014; 16 months. Why twice as long?
55. **Mrs G Nesbitt:** I do not know that I am in a position to comment on that. There are different procedures and arrangements for making legislation in Northern Ireland and Westminster.
56. **Mr Cree:** To try to be objective about it, surely it is ridiculous to expect that a Bill that will virtually be run in parallel with the GB Bill will take twice as long.
57. **Mrs G Nesbitt:** If the Committee wants to speed up the Bill's Committee Stage, that is within its discretion. I have based the timetable for the Bill on the timetable that we use for legislation in Northern Ireland. I have heard those comments and I have made it clear that it is a very ambitious and challenging timetable. I do not like things going so close to an implementation date and I would be delighted if we can get our Bill earlier. However, I do not think that we can do that.
58. To answer your question, we have different legislative processes and arrangements here than in Westminster. For example, Westminster has set up a dedicated Committee to deal solely with this issue. It is fair to say that they have stuck to their timetable pretty much to the day.
59. **Mr Cree:** Do you agree that we could learn something from that?
60. **Mrs G Nesbitt:** Possibly.
61. **The Chairperson:** OK, members. Is everybody happy enough?
62. **Mr Mitchel McLaughlin:** We are ecstatic.
63. **Mrs G Nesbitt:** I am delighted that you are ecstatic. I like to share good news.
64. **The Chairperson:** OK, Grace. Thanks very much.



## 27 February 2013

### Members present for all or part of the proceedings:

Mr Daithí McKay (Chairperson)  
 Mr Dominic Bradley (Deputy Chairperson)  
 Mrs Judith Cochrane  
 Mr Leslie Cree  
 Ms Megan Fearon  
 Mr Paul Girvan  
 Mr David McIlveen  
 Mr Mitchel McLaughlin  
 Mr Adrian McQuillan  
 Mr Peter Weir

### Witnesses:

|                    |                                                 |
|--------------------|-------------------------------------------------|
| Mr Harry Baird     | <i>FDA</i>                                      |
| Mr Jim Quinn       | <i>Fire Brigades Union</i>                      |
| Mr John O'Farrell  | <i>Irish Congress of Trade Unions</i>           |
| Ms Nuala O'Donnell | <i>Irish National Teachers' Organisation</i>    |
| Mr Bumper Graham   | <i>Northern Ireland Public Service Alliance</i> |
| Mr Brian Ferguson  | <i>UNISON</i>                                   |

65. **The Chairperson:** I welcome Mr Bumper Graham from NIPSA; Mr John O'Farrell from the Irish Congress of Trade Unions; Mr Brian Ferguson from UNISON; Ms Nuala O'Donnell from the Irish National Teachers' Organisation; Mr Paul Hardy from the Prison Officers' Association; Mr Jim Quinn from the Fire Brigades Union; and Mr Harry Baird from FDA. I do not think that we have ever had as many witnesses in front of us before. It makes it harder to intimidate you, as we like to do with witnesses. We will move straight into questions, Bumper, if that is OK, because our time is quite limited today.
66. **Mr Bumper Graham (Northern Ireland Public Service Alliance):** I should say, Chairperson, that although you may think that the massed ranks of the trade union movement are sitting in front of you, this is just the vanguard. The number of unions that are involved in public service pension schemes is

significant. We are the negotiating team, and we report back to a bigger group that includes affiliates. We have also been in discussions with some non-affiliates, such as the Royal College of Nursing and the British Medical Association, and we are keeping lines of communication open with them.

67. **The Chairperson:** I am sure that members have already been contacted by certain unions about this matter. It is the start of a process and, obviously, there has been a lot of debate and discussion about the issue at Westminster. We view this as a listening exercise at this point, and there will be further processes down the line.
68. In what specific areas might the Public Service Pensions Bill differ as a local Bill from the Westminster equivalent? What amendments are you going to bring forward? Obviously, there has been discussion about cost: whether there will be an added cost to the Executive and whether the unions will bring forward cost-neutral proposals.
69. **Mr Graham:** There are a number of points of principle to discuss. However, I will turn to the process to start with. We are in an unusual situation in that, yesterday, the Westminster Bill had its Third Reading in the House of Lords and will now return to the House of Commons. I have not had an opportunity to check exactly what happened yesterday, but around 54 amendments to the Bill were tabled, of which a third were accepted, a third were not moved and a third were rejected.
70. I have no doubt that additional changes will be made before the Bill progresses further. We are not quite sure what shape the Westminster Bill will take. There are still many concerns on points of detail, such as the retrospective powers in the Bill to claw back already-accrued benefits. There are issues to do with governance that still need to

- be resolved, and there are big issues concerning the role of the Treasury in determining how evaluations are done and what that will mean for scheme costing, particularly in relation to cap-and-collar arrangements.
71. When it comes to Northern Ireland, we believe that we need to tackle significant deficiencies in the Westminster Bill, some of which are quite detailed and technical matters to do with pensions. However, there are points of principle to consider as well, not least the age of retirement, with the linkage of the normal retirement age to the state pension age for most of the schemes, and that being tied to the Westminster coalition's proposals to increase the state pension age to 66 by 2020, 67 by 2026, and to review that every five years thereafter.
72. There are issues around the ability of people to continue to work up to that age, particularly in a number of areas, such as health. It was agreed that a working group would be established, and that was signed off by the Secretary of State for Health in Britain. However, Danny Alexander decided that he did not care what that group came up with and that we would have whatever he told us, namely the linkage of the state pension age and the normal retirement age.
73. In Northern Ireland, however, we believe that there is a bigger issue, which, I hope, the Committee will agree to examine in detail. I consider it to be more of a macroeconomic issue. If you keep public servants at work, shackled to their desks or whatever else they are shackled to these days, until they are 67, 68 or 70, what does that do to youth and graduate employment? You will not free up those jobs for younger people who come behind.
74. No one has costed this. The Government's actuaries, the Treasury and our own Finance Minister, along with Department of Finance and Personnel (DFP) officials, produce wonderful figures, but no one has asked about the cost of the wider macroeconomic issues. It is not just about the impact that it has on youth and graduate unemployment; there is evidence about the power and the spend of the grey pound, as it is called, which tends to be spent in more local economies. If you deny the opportunity for that, there will be an impact on our local services and shops.
75. There are issues about governance. I would say that the Finance Minister misled the Assembly in his statement in late November, when he said that discussions about public service pensions were ongoing. He was referring only to the Civil Service pension scheme. Until we met DFP officials a fortnight or so ago, there was no engagement on all the other schemes. Pensions are deferred pay. It is a negotiable matter. We want to make sure that there is proper engagement, and when I say that, I mean negotiations. We made that clear to the DFP officials we met. We told them that we were not prepared to sit and talk to just DFP officials. The big sponsoring Departments such as the Education Department, the Health Department, the Justice Department and, in particular, for the Northern Ireland Local Government Officers' Superannuation Committee (NILGOSC) scheme, the Department of the Environment (DOE) need to be at the table. That one is particularly important, because it is a funded scheme, whereas the others are unfunded schemes. Maybe I should declare a slight interest — not a conflict — in that I am the deputy chair of NILGOSC. There are issues like that, which we need to get around.
76. From reading what has been said in statements and Assembly reports, I see that the timeline for this seems to be to hammer away at full speed. The difficulty with that is that we have not seen the outcome of the Westminster Bill, and secondary legislation is required on the back of the primary legislation. Some officials are suggesting that you could proceed with the secondary regulations ahead of the primary legislation, which I think is absolute nonsense.

77. We need to be sure about other interfaces. For instance, there was the publication of the proposals for the single flat-rate state pension. There are three paragraphs in the explanatory notes about the impact on contracted-out schemes for public servants. However, it does not give clear, definitive guidance as to what that means. There are numerous interfaces. We do not believe that the quote of £262 million is itself a case for running 100 metres faster than anyone else. The need to look very carefully at the technical stuff in this will require time. There is a real pressure on the local government scheme. You are talking about 2014, not 2015, for that. We are only 13 months away from that, without the primary legislation and needing to see the regulations.
78. My final opening point is that we asked DFP officials to provide for us a comprehensive list of all the affected schemes. In the consultation document, only major schemes are referred to. However, there are many other schemes. They indicated that the North/South pension scheme was going to be included as well. However, reading the Assembly report on what the Finance Minister said back in November, I see that he said that although that would be there, it might be at a different date. We need to see the entire picture and determine, when it comes to the secondary legislation and the regulations, which of those will be dealt with by negative resolution and which by affirmative resolution.
79. **The Chairperson:** Some of the services affected include the Fire Brigade, the police, prison officers, and so on. Is there a specific view on that?
80. **Mr Graham:** Jim will want to talk particularly about the Fire Brigades Union. The prison officer issue was described best at one of the Committee sessions at Westminster. Somebody is engaged in violence on a Friday night outside a pub, and a policeman comes along and puts him in the back of a wagon and takes him to a cell. He then appears in court on the Monday, and the policeman is finished with him. The person is sent down for 18 months, and continues to behave in such a manner for 18 months in prison. What is the difference between a police officer with the earlier pension age, and prison officer with the extended age? The same applies in the likes of the health service, where that affects people in the ambulance service and nurses, with regard to lifting, etc. There are big issues about occupational groups and their ability to continue to do their job. Jim may want to say something about the Fire Brigade position.
81. **Mr Jim Quinn (Fire Brigades Union):** There is an important clause in the Westminster Bill that imposes a pensionable age of 60. There is no discretion. The Fire Brigades Union has been trying to get that amended through the passage of the Westminster Bill. We have not been successful yet. I think that everyone in the room would agree that having a group of firefighters aged 60 trying to pull people from a burning building or perform tasks that a much younger person could do better is a very difficult and ultimately unsustainable position.
82. The Westminster Government have commissioned a report into the normal pension age of a firefighter. Our belief is that it backs up the understanding that firefighters will not be able to work probably beyond 55, and certainly not to age 60. The evidence that it produced suggests that somewhere between 50% and two thirds of all firefighters will not be able to reach that age in their Fire Service career. If that happens, there is only one way to get rid of them, and that is to sack them. That will be done on the basis of declining capabilities, and that is suggested in the report. That is something that we cannot countenance. It brings up other issues as well, such as that of female firefighters. No female firefighter will be able to work to that age, if those conditions are imposed and people have to work to age 60. The physiology of female firefighters is such that they will not be able to reach the current standards. The current

- standard is 42 in VO2 max, which is a technical term, but it basically means the capability to work in a firefighting job. If we impose this and make people work on, we will have very few, if any, females in the job. Therefore, there are lots of concerns in the Fire Brigades Union about the retention of females in the service. We are trying to reflect that concern.
83. **The Chairperson:** Is that down to fitness, Jim? How often do firefighters take fitness tests?
84. **Mr Quinn:** We take fitness tests every six months. The only way to keep achieving the standard is to start off at a very high level when people are recruited. If that happens, it will root out a lot of people, particularly females. Just from the point of view of physiology, it is going to be very difficult to recruit people. Naturally, people's fitness declines. What the Government are suggesting is that you improve your fitness throughout your career. That is not going to happen. Another impact of that is that people will not remain in the scheme if they are not going to attain a pension at the end of it. Therefore, when people start to opt out, the scheme will become unaffordable and unsustainable. It will not achieve what they are trying to achieve, but the opposite. People will opt out of the scheme, making it more expensive.
85. **The Chairperson:** Is there not an argument with regard to back-room staff? There might be a role there for people.
86. **Mr Quinn:** When the Government introduced the new scheme in 2006, whereby people have to work to 60 anyway, they thought that they could redeploy people within the service. We carried out a survey recently and it produced a result of 16 jobs in the whole of the UK available for back-room staff. They have cut the numbers so thin that there are no non-front-line jobs to move people into. The only way that you can take people off the job is basically to sack them on grounds of declining capability. They are not going to pay out on pensions; they are just going to try to sack people on capability grounds at that stage. We are going to have a large swathe of firefighters — by the Government's own admission, somewhere between 50% and 66% of those over 55 — who will not be able to work on the job at the current standard. Either they will reduce the standard, which is not possible because you need to reach a certain standard to be able to perform the job, or they will get rid of people. Therefore, a key concern for us is that people over a certain age will not be able to perform the job.
87. **Mr Graham:** That raises two other points. Jim has mentioned capability. There is good evidence in all existing pension schemes, be they public or private, that ill-health retirements increase in the older category of worker. If you increase the age of retirement, the propensity for ill-health retirements increases correspondingly. The cap-and-collar mechanism is a ceiling, based on a percentage of pay that the employer would not pay any more than. I think that the Treasury model scheme is round about 19.4%. Therefore, if the cost of the scheme exceeds that 19.4%, including the employees' contributions, only two things can happen: either the employees are asked to pay yet more again, or you have to amend the benefits, such as the value of the pension in accrual, or even the age of retirement again, bizarrely. That is a consequence of the employer — in this case, the Government — determining the age of retirement. If they increase the age of retirement and increase the costs, why should the employees have to bear the burden of meeting those costs as a consequence of that action? We want to see ill-health costs being totally discounted from the cap-and-collar arrangement.
88. **Mr Weir:** You will be a lot more familiar with a lot of the jargon. Will you explain the cap-and-collar mechanism?
89. **Mr Graham:** The Treasury produced a model for a scheme that was made up of the costs of the proposed new arrangements. I think, off the top of

- my head, that it was coming out at 19.4%. It worked out how much the employees would contribute to get to that 19.4%, and then how much the employers would contribute. In each of the schemes, there will be a ceiling based on the employer contributions and the employees'. When you combine them, you get the absolute cap. If scheme costs go up, for example as a consequence of improved mortality, and you exceed that cap, that has to be paid for. The Westminster Government are saying that the only people who will pay for that are the employees, and that the only way in which you can do that is by getting the employees to pay even more or reduce the value of the benefits. The collar is to stop what happened in the 1980s and early 1990s, when many schemes, particularly contributory schemes such as the local government scheme, were well funded, so the employers stopped putting money into them. If you increase the age of retirement, you increase the propensity for ill-health retirements. They are the most expensive thing that a pension scheme has to meet. The likelihood is that costs will increase because of the increased age of retirement and the correlation between the age of retirement and ill health. If that happens, it will not be the fault of the employees; it is the fault of the Westminster Government and employers for increasing the age of retirement. Therefore, that should not feature in the cap-and-collar mechanism.
90. **Mr Weir:** Sorry. What is the collar part of it?
91. **Mr Graham:** The collar is the level below which the employees cannot fund. In the 1980s and 1990s, employers stopped paying into some pension funds, particularly the likes of the local government fund, because they were well funded; they were at 100% plus. They took what were called contribution holidays. The collar is there to stop that happening in future. It means that the contribution level would drop, but it could not drop below a certain level.
92. **Mr Weir:** It a floor-and-ceiling type of arrangement.
93. **Mr Graham:** Yes.
94. **Mr Weir:** OK. I was just unfamiliar with the expression.
95. **Mr Graham:** The other point that arises out of what Jim said is that DFP, in its initial screening, said that it did not see that there was a requirement for a full equality impact assessment for the Public Service Pensions Bill. I find that perverse. The one scheme that did carry out a full equality impact assessment was the local government pension scheme in England and Wales, and it found that the proposals were potentially discriminatory for a number of categories. Given the range and number of people affected by it — Jim has already alluded to the particular problem of gender bias — a full equality impact assessment is an absolute necessity. It impacts on very large numbers of people.
96. **Mr D Bradley:** The Department told us that it has taken the lead in establishing a central forum to facilitate collective consultation between trade union representatives and a collective trade union grouping, such as the Northern Ireland Committee of the Irish Congress of Trade Unions (NICICTU). Where does that stand at the moment? Is that a good way for the trade union movement to engage with the Department on the issues?
97. **Mr Graham:** As I said in my opening comments, Dominic, I believe that the Finance Minister misled the Assembly when he talked about the forum back in November, because that was purely on the Civil Service scheme. We did get communication from DFP through the Irish Congress of Trade Unions, and we have had one meeting with the Department. We have a further meeting scheduled for next week. At the meeting that we have had, people who are around the table now were there, plus a couple of others from trade unions. DFP was represented by three of its officials. We said to them that the mechanics

- for dealing with this will have to be that other Departments are at the table, because of the significance for the likes of Education with the teachers' scheme, Health with the health scheme, and local government. Broadly, they were in agreement, and it remains to be seen what will happen at the next meeting.
98. **The Chairperson:** Have the unions been in contact with the other Departments?
99. **Mr Graham:** In some cases, yes. I happen also to lead for the trade unions on DOE and local government, and we had a meeting of the review group last week. I also met the Minister of the Environment on other business last week, and this came up on the fringes of it. He has instructed his people to tell DFP that DOE officials will also be present. The mechanics of it are that if it is a representative group from the Civil Service covering the big Departments involved, it will work.
100. **Mr D Bradley:** Is any Department not involved?
101. **Mr Graham:** We do not know. At the first meeting, only DFP officials turned up, and we said that we expect to see officials from all the major schemes there. We asked them to identify all the schemes that will be affected, so, hopefully, that will work.
102. I make two points that we made to them. First, this is not just consultation but negotiation. The Westminster Government engaged with the Trades Union Congress in negotiations on public service pensions, and we expect no less of DFP officials and officials from the other Departments that will accompany them. Secondly, we expect to be given all the information that we require. We asked for the paper from the Government Actuary's Department (GAD), which was, no doubt, passed through Treasury and produced the wonderful £262 million figure that the Finance Minister throws around with gay abandon. We were told that the Government Actuary's Department will not let DFP release it to us. We have said to DFP that it had better release it to us, because if it does not, I will have it in the industrial court in an attempt to release it as soon as I can under disclosure for collective bargaining purposes. I hope that DFP will come to the table, negotiate and provide us with all the information.
103. I will pick up on the figure of £262 million. That was done on the back of a cigarette packet, on the basis that this is what those in London said that they were going to knock off the block. It was a warning that if we did not do what we were told, we would lose £262 million. As far as we can determine, the basis for that was that they took the health scheme as a model scheme, worked out the costs and then applied those across all the other schemes. Well, the health scheme is not the same as the local government scheme.
104. **Mr D Bradley:** We have figures here for the schemes. The breakdown is £100 million for health, £62 million for teachers
105. **Mr Graham:** Yes, Dominic, but that is based on the fact that they said that the cost would be 7% on the health scheme. They then applied 7% to all the other schemes, but the health scheme is very different. The health scheme has a large number of people not in it — probably around 25% — who are low-paid people. However, it has big numbers of highly paid people in it, such as consultants and doctors. That skews the costs in the scheme, which would not necessarily be the same costs in the other schemes. We want proper costings done. We do not trust the Government Actuary's Department. We certainly do not trust the Treasury in London.
106. The other aspect is that I fail to see how it will cost £262 million in the first year. You need to remember that the Government have already banked the change in moving from the retail price index (RPI) to the consumer price index (CPI), which is a saving of around 15% on pension scheme costs. They are already enforcing the second year of three years of increased contributions for all the unfunded schemes, such as

- the health scheme and the Civil Service scheme. Therefore, they are getting money in.
107. There is a 10-year protection arrangement in the schemes. If you move to increased age retirement and career average, yes, there will be savings, but those savings will be built up only over time. They will not be there in the early years. I suspect that this is the usual stuff from the Treasury: a punitive figure, without any real rationale behind it, has been picked to save the Treasury in London money. Unfortunately, the Finance Minister and his officials blindly accept as gospel everything that comes out of the Treasury in London.
108. **Mr John O'Farrell (Irish Congress of Trade Unions):** As is apparent from what has been said so far, this is a very complex issue. I thank the Committee for seeing us, and the Committee Clerk and his staff for facilitating the meeting, at extremely short notice.
109. As you can see, it is a complex issue, which is why we wanted to meet the Committee as early as possible. This relates to your point, Mr Bradley, about the structure of the negotiations. Primarily, the negotiations that begin next week between trade union side and DFP officials will, like this Committee's deliberations, focus on the primary legislation. We understand that that is timetabled to land in the Assembly in June of this year and is structured to finish its full legislative passage by May 2014, for the changes to be brought in by 2015, which is meeting the Treasury's timetable, so everybody is happy.
110. The primary issue is complex enough. The difficulty — this is why we wanted to meet the Committee as early as possible — is the sheer amount of secondary legislation involved. There will be separate regulations for every pension scheme. That is the complexity of it all. We do not even know how many schemes there are. When we met the officials last week, we discussed airport police and harbour police. They have separate pension schemes. Despite the fact that the airport is privatised, the policemen and policewomen who work there are public sector workers, and they are on a separate pension scheme. It is a very complex issue because of the funding arrangements of cross-border bodies. The people who work in the North are on North/South pension schemes. Hopefully, when we meet DFP officials next week, we will have a comprehensive list.
111. It becomes quite apparent — this is the relevant point for the Committee — that the secondary legislation is going to affect workers in every single Department. Therefore, every Department and every scrutiny Committee are going to have to get their head around the scale of this.
112. The Department of Health, Social Services and Public Safety has the largest scheme here. Its chunk of the £262 million figure is a nice, conveniently round £100 million. That is a large scheme. It affects the NHS, which is the single biggest employer in Northern Ireland. DFP and the Department of Justice (DOJ) will also be affected. The implications are not clear for the DOJ budget as regards the Police Federation and prison officers, not to mention judges. That is a separate issue. Justices have their own pension scheme. We are trying to find out who is responsible for that. Before the devolution of policing and justice, the pension scheme for judges was administered through the Lord Chancellor's office in London. Since devolution, there has been a big question mark over who actually runs that.
113. You can see the complexity. That is the main reason why, as I said, we wanted to meet you as early as possible. When the Committee considers this in full, to understand the bigger picture, it is almost going to have to do a parallel process to what we are going to do on the trade union side, and, presumably, what the officials in DFP are going to do for other Departments. In other words, you are going to have to liaise and communicate with the Committee of every other Department. We cannot

- get into the implications of, for example, the firefighters' scheme. Jim raised some of those issues. The firefighters' scheme will be affected by issues that are specific to the primary legislation that talk about retirement age. That is administered by the Department of Health, Social Services and Public Safety, if I am correct.
114. I am taking this opportunity to impress on the Committee the complexity of this and that we are here today to make it clear to you that we are determined to help the Committee as much as possible to negotiate a way through the thickets of this very complex and very important legislation, which will affect very single public sector worker in Northern Ireland. At present, that is around 250,000 people. It will also affect everyone who will work in the public sector for the next 50 years.
115. **Mr D Bradley:** Bumper, what response did you get from the Department of Finance and Personnel to your request that it extend its team to include the other Departments?
116. **Mr Graham:** It said that it would go away and think about it. It is only logical that there be people from the other Departments at the table. Each scheme has its own complexities, and each scheme made up the figure of £262 million, albeit calculated on the crude 7% top-slice approach. Each scheme will have different considerations on the impact of increasing the age of retirement on its workforce. We already mentioned the work that is being done in England and Wales on the health scheme. We suggested to the Department of the Environment that a similar working group be established for the local government scheme, which, remember, in Northern Ireland, includes not just council workers. It covers education and library boards, non-teaching staff, Housing Executive staff, and so on. If you do not have people at the table who are able to deal with this, all you will get is DFP officials not engaging in proper negotiations and just parroting what came out from the Westminster Bill. There are special considerations for Northern Ireland for each of the schemes, and, as I said at the outset, there are wider macroeconomic issues.
117. **Mr D Bradley:** Is the trade union side happy to have a collective trade union grouping such as NICICTU?
118. **Mr Graham:** Yes. As I said, we are here on behalf of the Irish Congress of Trade Unions. As I mentioned at the outset, a number of other unions are involved, but this is the negotiating team that we have established. We established it on the basis of trying to ensure on our side that each of the main schemes is represented. We have been able to do that. We will report back to a much bigger trade union side, made up of all the interested trade unions, and that is a pretty standard, historical trade union approach to this.
119. **Mr D Bradley:** You quoted a figure in excess of £260 million. The Minister said that he received a letter from the Treasury on 3 December stating that if there is any failure of delay in passing the legislation, the block grant will be proportionately reduced. You said that you question those figures. Have you any alternative figures or any means of coming to alternative figures?
120. **Mr Graham:** Unless the Treasury is going to let me run around all the nooks and crannies in Westminster and get into the books, it is difficult. We want to see the Government Actuary's Department's assessment of how the savings are made up and perhaps challenge that. I have already said that savings already are accrued through the indexation change, additional contributions and the fact that this is like an escalator, with savings being increased as the escalator rises. There should not be that level of savings in the early years. Until we see that, we will not be able to give a detailed analysis, but we can say that the crude approach of taking health as the model scheme, saying that the savings would be 7% and just applying that across every other scheme is a highly questionable way of sorting out public service finances.



121. **Mr D Bradley:** Therefore, you think that that is a vastly exaggerated sum.
122. **Mr Graham:** Yes.
123. **The Chairperson:** Bumper, the Department might argue, and, often does, that all trade unions that are represented here are represented at Westminster at negotiations there, and that there might be a parallel process. We often hear that argument. What would you say to that?
124. **Mr Graham:** That is not true. Some of the unions that are involved here operate either in the North or in Ireland as a whole only. At the end of the day, pensions are a devolved matter. It is only right that we have the opportunity to deal with you, the Minister responsible and DFP officials on what is a devolved matter. We should not just blindly follow everything that happens in the other offshore island. Otherwise, what is the point of having our trade unions? Do we just pack up our tent and go?
125. **Mr O'Farrell:** As I mentioned earlier, we have been in contact with trade unions and representative organisations not affiliated to ICTU, such as the British Medical Association, the Royal College of Nursing, the Royal College of Midwives and the Police Federation. Obviously, there is an issue with what I can say legally about the Police Federation issues. However, the feedback that we have had from the medical colleges is that they are very happy for us to negotiate. They will be fully in the loop, as it were, on the trade union side on this matter.
126. If you want a Northern Ireland-specific point to bear in mind, it is this: Northern Ireland has the lowest rate of occupational pensions of any region of the United Kingdom. More people in Northern Ireland are solely dependent on the state pension than in any other part of the United Kingdom. It is a major contribution to fuel poverty and age poverty, not to mention the exclusion of older people in the public life of Northern Ireland.
127. There is a separate but related issue of course, which is the general issue of the lowering of demand in the economy. It is not just an issue that is relevant to current debates on the present rounds of austerity measures by the Conservative-led coalition Government in Westminster. The issue relates to Northern Ireland having the lowest wages of any part of the United Kingdom. Bearing in mind the present state of pensions, particularly private sector pensions, the state of wages, particularly private sector wages, the long-term consequences of everything else that has happened over the past couple of years, the likely trend of austerity over the next few years and the flatlining, zero-growth economy, there is a wider cost implication and context that we need to look at, all of which is specific to Northern Ireland. Therefore, yes, we should be talking about it from the perspective of workers and the economy of Northern Ireland.
128. **The Chairperson:** Before I bring Mitchel in, I must say that we are starting to run short of time. I ask members to be as succinct as possible.
129. **Mr Mitchel McLaughlin:** That is before I even say anything. *[Laughter.]*
130. **Mr Cree:** And he is supposed to be on your side.
131. **Mr Mitchel McLaughlin:** I know. You want to see him on a good day.
132. The Committee understands the value of the engagement, which has really only opened between you, as the negotiating team, and the Department, and which clearly draws in the other Departments. John referred to the complexity of the issue. It is also very difficult in circumstances in which we are up against a parliamentary timetable that we can do very little about other than to try to cope with the challenge. It would be difficult for us to exchange, I suppose, the fullest information between us so that we might work with each other mutually to deal with that in circumstances in which you have only just opened negotiations. I am

- certain that you would have negotiating mandates and positions. Do you see a stage in the near future where, in fact, you could give the Committee a fuller briefing on that detail? It would help us to establish parameters.
133. There are certain things about which the Assembly can do nothing: it has very limited ability to raise additional finances. It has to cope with the outcomes of the comprehensive spending reviews. Already in this Budget term, we are coping with fairly draconian cuts, with perhaps more to come. That becomes a context in which we, as an Assembly, and all the individual Committees will come at the issue. We need to have a full register of the number of pension schemes that we will be dealing with and the core templates on which we can facilitate an engagement so that some type of agreement can emerge. It is in everyone's interests that we have as much information as possible.
134. Do you accept that? I am not going to ask for it today, because it is too early in the process. It would be of value to the Committee as we conduct our enquiries, particularly when we come to consider the Bill.
135. **Mr Graham:** I accept the difficulties. I am trying to read the Hansard reports to see what is happening to the Public Service Pensions Bill at Westminster, and it is not the easiest way of doing things, given the way in which amendments are moved and changed, and so on.
136. There are a couple of points to make. First, we need to get right underneath the money aspect — the £262 million. Secondly, I accept the point about the ability to raise funds.
137. **Mr Mitchel McLaughlin:** Whatever about the quantum, we expect that there is going to be a price tag on this, because that is what they are at.
138. **Mr Graham:** Yes, but we then need an assessment. That is why I would be hopeful that the Committee might commission it, in order to examine the macroeconomic impact, as I described it, on youth and graduate unemployment and on the grey pound spend as a consequence of keeping public servants working longer. That feeds into the Treasury, because if it can be demonstrated that money can be saved on social security payments for the likes of unemployment benefit, and so forth, that could be quite persuasive. It may even narrow the gap in the assessed impact.
139. The other dimension is the timeline. You need time to get legislation through at any point, but something as complex as pensions needs full examination. At the Bill's Second Reading in Westminster, Sammy Wilson asked Danny Alexander what would happen if we did not meet the dates, purely for technical reasons, not for reasons of principle or because of changes. Danny Alexander replied that the Finance Ministers were meeting shortly to discuss that issue. That was the last that we heard of it.
140. If there is a delay — not because of fundamental changes — it will be as a consequence of the lack of having the Westminster Bill and then being able to look at parallel, although not identical, legislation for Northern Ireland. That should be put back to the Treasury in London not as a direct cost as a result of amendments and changes but simply as a consequence of suppressing the opportunity for proper engagement.
141. Sitting here, 13 months away from the proposed new local government pension scheme for NILGOSC and local government, it is hard to see how that can be done, even if it did not require the primary legislation. The view that you can have secondary legislation ahead of primary legislation needs to be dismissed.
142. In my opening comments, I mentioned that there are still clauses that need to be examined. Until we see the final shape of the Bill, we will not know whether those have been completely written out. That has not happened as yet. Those clauses give the Government and employers the ability to change

people's entitlements retrospectively. That is contrary to the European Convention on Human Rights, because pensions are deferred pay and are, therefore, property. It is to be hoped that those changes will be made in the Westminster Bill, but if they are not made, and those provisions are carried through here, they will be challenged in the European courts. The cost of those challenges will fall to the Executive and Departments here, not to the Treasury in London, which will have been the cause of those legal actions. We would rather get the thing right than rush it. I assure you that in preserving people's benefits and rights, we will prosecute to the nth degree.

143. **Mr O'Farrell:** As we said earlier, we have said to DFP officials that we would like to see the full estimates and basis of the GAD figure of £262 million. When we get that — hopefully, in the spirit of open government and because of the legal requirements of negotiations, we will get it — we will be only too delighted to share it with the Committee. If we do not get it, we may ask the Committee to ask DFP for that important piece of information to be made public.
144. As a researcher, I make considerable use of the excellent research facilities of the Assembly to look at the much wider and more holistic take that my colleague referred to.
145. **Mr Mitchel McLaughlin:** We will look at the Hansard report of this discussion because there are several action points that we, in our own interest, but certainly in the public interest as well, would wish to pursue. I am not getting exercised about the outline figure of £260 million, but I know that there is a price tag. It is in everybody's interests that we know precisely what that is. We want to know the range and number of pension schemes and the differences among them so that we can take an informed approach. On that basis, this was a useful information exchange, but it is going to have to become more of an engagement as the process develops. I do not know whether anything can be done about the timetable. I very much

doubt that anything meaningful can be done. Even if we were to get some kind of relief in that compressed timetable, I would see it as only a limited relief because the broader scheme of a longer period of time will level out. It would be a postponement rather than a solution. At some stage, I would like to hear your proposals and solutions to inform our engagement. For now, thanks very much.

146. **Mr McQuillan:** John and Jim, I will address my question to you because we heard a lot of sense from you, but all we heard from Bumper was a rant. We are here to get information, not a rant. There will be a cost implication to whatever diverts us away from the policy of the Treasury. What would you say to people who are not the chosen few and who do not have the luxury of a public service pension, such as the self-employed or those who work in a small business? They work perhaps two or three days a week, trying to survive and keep their head above water. We are going to take £200 million out of the block grant to cover the public pension scheme. What would you say to those people? I doubt that they will be very sympathetic to you.
147. **Mr O'Farrell:** I fully agree. An outrageous number of people here have no pension provision whatsoever. Those who have occupational pension schemes are public sector workers or people who work for larger companies in Northern Ireland that provide such schemes. The view is that because Billy does not have one, Sammy should not have one either. It is a pointless discourse; you can never win. I am terribly sorry to say that, Mr McQuillan.
148. We are constantly told that the backbone of the Northern Ireland economy is small business. There are two things to say about that. First, the backbone of the economy in Northern Ireland is the public sector. If you look at economic impact, security, longevity and sustainability, most jobs tend to be in large companies or the public sector. The problem with the structure of the Northern Ireland economy is the reality of small businesses. That is not to say anything negative about people trying

- to set up their own business; please do not construe it as such. The brutal fact is that if you happen to work in a small business or you happen to be a sole trader, you tend not to have a trade union supporting you or negotiating on your behalf. Your wages tend to be closer to the minimum wage. The minimum wage tends to be closer to the ceiling than the floor for people who work in small business in the private sector. People in the private sector tend not have pension provision. That is not the fault of public sector workers. It is the fault of a broader shift in values that has taken place in the United Kingdom economy as a whole and, you could also add, the Republic of Ireland's economy as a whole. Over the past 40 years, the economy of the United Kingdom has doubled in size, whereas in the same period, the number of people with adequate pension provision has declined by a third. In other words, certain decisions were made over the years. The country, as a whole, got wealthier; its economy has doubled in size from the 1970s.
149. It was announced only a few months ago that the last final salary scheme of the FTSE 100 companies was being closed to new entrants. Those decisions are being made not by public sector workers but by people who tend to run very large companies and who, for want of a better term, have made all the running in how we talk about the economy. What is very funny about it is that, for years and years, the same people have been stripping away the rights of private sector workers to a decent pension provision, such as my father when he worked for an engineering company, Hendron Bros, which had places in Belfast in Dublin. My father was a fitter and an engineer who worked in the private sector all his life. He had a pension provision, although it was not great, and everyone he worked with had one. Anyone, including you, will remember that if your fathers worked in the private sector, they had some kind of private sector provision. That does not happen anymore. Those who decided to take that away are the same people who now say that public sector workers should not have a decent pension provision because private sector workers do not have one. Who took that provision away? It was not public sector workers but those who have a large interest in coming out with lines like that. I am sorry to say it, Mr McQuillan, but it is purely a red herring. Thank you for giving me the opportunity to nail it.
150. **Mr McQuillan:** I do not agree with you on that, because many people who are struggling to make ends meet will think that what public service workers have is a luxury that, perhaps, we could do without.
151. **Mr O'Farrell:** It is not a luxury, Mr McQuillan.
152. **Mr McQuillan:** I am not saying that it is; I am saying that that is what people perceive it to be. Self-employed people who do not have a pension and who are struggling will see this as a luxury, and they would take it tomorrow if they could get it.
153. To say that the Minister misled the Assembly is very misleading and should be withdrawn. The Minister gave a figure of £262 million, which is in this paper. Those figures were provided by the Treasury, so the Minister is passing them on. I am sure that the Minister did not take those figures and say, "Thanks, boys, I'll go ahead with those." He questioned it, and he has put it back to the Treasury. Anything that we question the Minister about is always put back with the Minister and looking for more. It is a bit misleading.
154. **Mr Mitchel McLaughlin:** Was the comment not about the breadth of engagement on the negotiations?
155. **Mr Graham:** I said that the Minister misled the Assembly on the reference in his statement to there already being discussions in the group. That group was purely the Civil Service pension scheme group. I did not say that he misled in relation to the £262 million. I seriously questioned the acceptance of figures provided by the Treasury and the Government Actuary's Department and

- using the health scheme as the model and applying the 7% figure across all schemes to extrapolate out the £262 million.
156. **The Chairperson:** The simple way of dealing with that issue is to write to the Department to seek information on how it calculated that figure.
157. **Mr Weir:** If we are writing to the Department, would it also be helpful to try to find out about one concern that I have about this? Will the final determination on the figure be the result of a negotiation between DFP and the Treasury? Will it be a Treasury-imposed figure at the end of the day? With the best will in the world, we can argue over what the exact amount is, and I take on board all that has been said about that. Ultimately, however, the problem, which the Minister has highlighted, is that the concern is that, if there is a lengthy delay that causes a certain amount being deducted from the block grant, that figure will obviously need to be worked out. We also need to get clarity and absolute certainty on who is actually producing that figure.
158. With the best will in the world, we could all rail against the unfair nature and level at which that has been put. If it turns out, essentially, to be something that is pretty much within the Treasury's gift as to how much it is, that creates a different ball game. If we are writing to the Department and could get that information as well, it would be appreciated.
159. **Mr Mitchel McLaughlin:** We need to remind ourselves that when the initial discussions on corporation tax started, we got some very exaggerated figures, which, on forensic examination, became more and more real.
160. **Mr Weir:** With respect, I think that there is a fundamental difference with this. I appreciate that figures will be bandied about. With corporation tax, it is, ultimately, an issue of whether we want it and a potential price tag is put on it. The issue with this is that if something is not done on time, will it be a question of — dare I say — a negotiated amount as to what the impact will be on the block grant, or will it, ultimately, be simply like a sort of Barnett consequential, effectively, that is lopped off the block grant? That puts it in a different category. We need to find out that information as well, particularly, as it has been indicated, we are already writing to DFP on the subject anyway.
161. **Mr Graham:** Chair, the Committee may want to get its own actuarial assessment done on that one point.
162. **Mr Weir:** I would not necessarily be hostile to that. However, I think that we need to get those initial bits of information first. If we are in a situation, for example —
163. **The Chairperson:** Peter, can we assess that after we finish our questioning?
164. **Mr Weir:** I understand that. I am just making the point that —
165. **The Chairperson:** I am bringing in Leslie.
166. **Mr Cree:** I want to ask about the macro level, gentlemen. What is your opinion on the career-average versus final-salary system and the consumer price index versus the retail price index mechanism?
167. **Mr Graham:** I will take the easy question on RPI and CPI. Unfortunately, that was not included in the Bill; it was done separately. It resulted in a 15% reduction of the total value of public service pensions. Recently, the Government carried out an assessment of RPI by the Office for National Statistics (ONS). They decided to stick with the RPI formula. We believe that the RPI formula is the correct one to use because it provides the true cost-of-living increase. For instance, CPI does not include housing costs. Increasingly, as people find it difficult to get into the property market, they will not have their mortgages paid off during their working lives; they will probably still be paying their mortgages off in retirement. That reason alone suggests that RPI is the more proper mechanism to use than CPI.

168. On the career average re-evaluated earnings aspect, there are differences of opinion among trades unions. Some unions represent people on a grade basis. If you represent people in the higher echelons, a final-salary scheme is more attractive. There is evidence to suggest that if people have long-term careers and, perhaps, only one or no promotions, the career-average scheme is fairer to them. It then comes down to each scheme because each has a different accrual rate. The accrual rates vary from about one forty-third to one fifty-seventh across the various schemes. However, that is linked to other factors, including contributions, etc. There are legitimate differences of opinion on the career-average issue, whereas the RPI/CPI issue is a no-brainer.
169. **Mr Cree:** Thanks, Bumper.
170. **The Chairperson:** Do you have any responses to the initial consultation on investment? I am conscious that we have not had papers from the unions yet. That would help to inform the Committee.
171. **Mr Graham:** All the unions will look individually at the consultation; we will also try to pull together an umbrella response. Northern Ireland has not had problems with sequencing in the past; the issue is in trying to put together the sequencing of events. It would be useful to see whether the final Bill through Westminster is cleared before the deadline for receipt of comments on the basis that the Finance Minister said that he wants a mirror Bill. Until you see the final shape of what the mirror reflects, it would be premature to jump in. However, we could provide some preliminary and interim comment.
172. The Bill should contain provisions for what is known as “fair deal”, but it does not and neither does the Westminster one. Fair deal is the provision of pension arrangements for people whose jobs are privatised, contracted out, externalised — call it what you will — so that they can remain in public service pension schemes. At present, that is done by a code of practice. However, we want to see it legislated for, particularly since we are seeing increased privatisation of public services in Northern Ireland. Every day, some Department threatens to carry on Maggie’s great thinking.
173. **Mr Quinn:** Chair, on your last point, the Fire Brigades Union has two documents that it would like to put to the Committee. We have done some work on the normal pension age review for firefighters; perhaps it would be useful for members to look at it. There is a two-page briefing note to a 160-page document, which you probably will not read. The briefing note may be helpful.
174. **Mr O’Farrell:** A consultation period is open at present; it closes on 15 April 2013. A submission will be entered on behalf of the entire trade union movement to DFP. We will, of course, share that. I will probably be the individual who compiles the submissions from the various trade unions into the one document that we will submit. I will happily provide you with any secondary information. However, at the same time, I appreciate that you will be swamped with material. We will happily share anything that we enter. As I said earlier, if any interesting snippets that we get from DFP in the course of negotiation may help to clarify issues in the minds of members, we will be delighted to share them.
175. As you are also aware, DFP has set out the Assembly stages of the Bill. Of course, any time you wish us to talk to you, we will be glad to contribute. We will be happy to submit whatever papers you require to help with your considerations over the next year.
176. **The Chairperson:** Gentlemen, thank you very much. That is very useful.

## 24 April 2013

### Members present for all or part of the proceedings:

Mr Daithí McKay (Chairperson)  
 Mr Dominic Bradley (Deputy Chairperson)  
 Mr Leslie Cree  
 Ms Megan Fearon  
 Mr Paul Girvan  
 Mr John McCallister  
 Mr David McIlveen  
 Mr Mitchel McLaughlin  
 Mr Peter Weir

### Witnesses:

Ms Margaret Coyle  
 Mrs Grace Nesbitt  
 Mrs Blathnaid Smyth

*Department of Finance  
 and Personnel*

177. **The Chairperson:** Grace, you are welcome. A number of issues were raised in the previous session, particularly regarding the figure of £262 million. Do you want to respond quickly to some of the issues raised in the previous session?

178. **Mrs Grace Nesbitt (Department of Finance and Personnel):** I would like to thank the Committee for the opportunity to attend. The key purpose of the session is to update the Committee on the initial outcome of the response to the consultation on the proposed Public Service Pensions Bill. As I go through this, I will try to pick up on the points made by trade union colleagues in the previous session. I will attempt to follow up on those, and if I cannot do so substantively today, we will do so in writing when we get the Hansard report, if that is acceptable.

179. It is useful to come here today. Any updates that I and officials can provide are helpful in progressing this important Bill through its stages. Let me say at the outset, as I have said before, that the timetable for the implementation of the Bill is extremely challenging, and there is a significant financial penalty. We can debate the quantum of that penalty, but

it is accepted that if we depart from the provisions of the Westminster Bill, there will be a financial penalty. Given my knowledge of the world of pensions, my view is that it would be significant. However, we can pick up on that point later.

180. I welcome this opportunity and commend the Committee for inviting me. As has been said, it is important that the Bill has a speedy passage in the Assembly.

181. With your permission, I will recap little bit. I briefed the Committee on 9 January on the proposed Public Service Pensions Bill and its core provisions, timetables and financial implications. I will not rehearse that again today. The proposed Bill has a cross-cutting effect and the Department of Finance and Personnel (DFP) is taking the lead role. We have established a central forum to facilitate consultation between representatives of each scheme impacted on by the Bill. That is the collective grouping, led by NIC-ICTU (Northern Ireland Committee, Irish Congress of Trade Unions), which has been established. We have also established a cross-departmental working group.

182. We have responded to the Committee on a number of the issues raised; again, I will not go into those in detail in this session. We have provided further updates on all the pension schemes affected by the Bill, clarification of how the drafting of secondary legislation will be sequenced, and the potential cost.

183. I will now comment in detail on the initial outcome of the policy consultation on the Bill. The consultation was launched in January 2013 and the closing date was 15 April. The purpose of the consultation document — just to remind members — was:

*"to seek views on the policy underpinning the proposal for the introduction of a ... Bill in the Northern Ireland Assembly."*

184. The consultation document was circulated to all relevant groupings and public service pension schemes, in line with the guidance produced by the Office of the First Minister and deputy First Minister for the distribution of departmental publications and consultation documents. We also issued individual letters to other public service pension schemes, notifying them of the exercise and advising them to instruct relevant stakeholders and business areas and bring it to their attention. We sent out a reminder about that in February.
185. Getting back to the responses, some came in after the deadline, and I will comment on them separately. I will deal with the responses that came in before the deadline first. There were 46 responses in total: 35 from individual public service members; four from organisational bodies; six from individual trade unions; and there was a collective NIC-ICTU response. There were also a number of responses that came in late. The advice that we have on those late responses is that we should accept them. We are keen to get as wide a view as possible from the consultation process. Among the responses that have come in late are responses from NASUWT, Arc21, Ballymena Borough Council, the South Eastern Health and Social Care Trust and one from an individual. I do not know what scheme that individual is associated with. We propose to accept those representations as it is, apparently, best practice to do so. I cannot comment on those because I have not seen some of them.
186. Of the individual comments in responses received before the deadline, 19 were from civil service scheme members; 10 were from teacher scheme members; two were from health; one from the police; and there were three others of an origin that could not be determined. The individual trade unions that responded were UNISON, NIPSA, FDA, UNITE, the Irish National Teachers' Organisation

and the National Association of Head Teachers.

187. The Department had expected a larger number of responses on this cross-cutting policy. I certainly thought that we would have had more. I can only assume that members perhaps fed their comments into their respective trade unions, but I actually do not know. For example, I refer the Committee to an update that I gave, wearing my purely Civil Service hat, on the consultation that we had about the year 2 increased contributions. On that occasion, the Department received 147 responses, which may have been as a result of a campaign letter that was issued to members by their union encouraging them to respond. I had expected more responses to this particular consultation exercise, given that it is so cross-cutting and across the schemes, but that has not been the case.
188. I will give my very initial analysis of the responses received. I think that it has been mentioned that we will be back to give a more detailed session, proposed for 8 May, to deal in substance with the responses because I am really not in a position to do that today. The vast majority of respondents submitted their views on aspects of the public service pension reforms that were outside the remit of this consultation. However, they used it to express their general disapproval and rejection of the overall austerity measures and of what was happening in the economy. Setting that aside, the responses fell into a number of broad areas and we can question and query these. The six broad areas on which I will touch are: first, the overall need for reform of public service pensions; secondly, managing pension costs and actuarial analysis; thirdly, the core provisions and the impact on public servants; fourthly, the move away from final salary and to the career average revalued earnings; fifthly, the linking of normal retirement age to state pension age; and, sixthly, issues around the screening-out of a full equality impact assessment. As I said, I am not in a position today to comment



- on those in detail. We will do that in a further session on 8 May, and we will, of course, provide the Committee with a written document in advance of that meeting.
189. With your permission, I will attempt to pick up on some of the points that were made in the previous evidence session, with the caveat that I may not have got them all. If the Hansard report shows that I have missed any, I and my colleagues will be happy to deal with them. Is that OK? Is that acceptable?
190. **The Chairperson:** Yes.
191. **Mrs G Nesbitt:** I will address points from the previous evidence session but perhaps not in the order that they were mentioned. The impact on the economy and the impact of people working longer and its impact on youth unemployment were mentioned. I remind the Committee that, because of age-equality regulations, we now effectively have no retirement age. I was trying to remember when the compulsory age of retirement was abolished in the Civil Service, because that was implemented before the legislative change. I must confess that I cannot remember the date. We have a growing trend of people choosing to work longer because we no longer have a retirement age for the Civil Service. I just wanted to bring that to the Committee's attention. Also, the Civil Service does not have a recruitment freeze at this time. We have actually had significant recruitment as well, but, again, it would be for other colleagues in corporate HR to provide more details on that. I just wanted to correct those points.
192. The decision taken by the Executive on 8 March last year was not actually a result of the three strikes. That was a later decision in November that was taken. Also, at that stage, and I think that it is apparent from the information that we have now provided to the Committee about the estimate that the Government Actuary's Department (GAD) did, the Executive, at that date in March, did not have any figures. We had said that there would be a cost, but we were not in a position to give them any figures, and the decision was made without the Executive having any figures. I just wanted to share that factual information. The figures from GAD were requested and provided over the summer to enable the Executive to have further information. I have always maintained that it was an estimate. It was to enable the Executive to have further information to help them to determine which legislative route they wanted to adopt to implement the decision that they had made in March, a few months earlier.
193. The key decision in November, as members are aware, was whether we went with the legislative consent motion with the Westminster Bill or whether we did our own pensions Bill. The outcome is obvious, and that is why we are here today. The figures, I suppose, to be honest, were to highlight the risk of any delay and what the consequences of delay would be. That is why the figures were required to help inform the subsequent decision. I just wanted to clarify those points.
194. I will hand over to my colleagues. Blathnaid will deal with the broader equality issues that have been raised, and then Margaret will deal with the latest update from Westminster — ping-pong, as it is called — and also fair deal. I think those are most of the points that were made, but there are others that we will pick up on. I will hand over to my colleague Blathnaid, who will deal with some of the points around the equality issues.
195. **Mrs Blathnaid Smyth (Department of Finance and Personnel):** The screening exercise addressed the core provisions of the Bill. It has to be remembered that it is a framework Bill. The core provisions will apply to all public service pension schemes. The screening exercise identified minor impacts on areas of age and gender, so it did not screen out everything. It acknowledged that there were impacts, but concluded that those impacts are mitigated or are attributable to factors external to the policy.

196. With regard to age, it was determined that that was mitigated through the transitional protection measures that are included in the Bill. Also, the policy reflects the Government's approach of removing default pension ages to address trends in longer life expectancy and historical inequalities. Newer, younger staff have higher pension ages than the older staff because of the reform of schemes in the past. In relation to the gender issue, there is the issue of longer life expectancy of women. That is partially mitigated by trends of longer life expectancy in general, but, importantly, although women are expected to live longer, in the public service, men typically earn more. In introducing the career average schemes, higher earners will continue to receive higher pensions, but with a fairer, more proportionate method of calculation.
197. That equality impact assessment will be reviewed as the Bill is introduced and passes through the Assembly process. Any further information coming out at that stage will be considered.
198. **The Chairperson:** Can we request a copy of the equality screening exercise for the Committee's information?
199. **Mrs Smyth:** Yes, we can send that. No problem.
200. **Mrs G Nesbitt:** It is publicly available. I think we may have sent the link earlier, but we can do that again. I will take a note to do that. I will pass over to Margaret.
201. **Ms Margaret Coyle (Department of Finance and Personnel):** I will update the Committee, and, indeed, trade union side, on the ping-pong process. The Lords amendments were considered in the House of Commons on 22 April, and they were all agreed bar two. The two that will be going back to the House of Lords are, obviously, the provisions for the Ministry of Defence police and firefighters in relation to the age of retirement. With the exception of those, the rest of them have been agreed, and we can certainly keep you updated on the Lords process in relation to that.
202. There has never been legislation for fair deal before. It has never been legislated for or been in the scheme rules. There is nothing specific in the provisions of the Bill that relates to fair deal itself. However, there are two provisions allowing for the transfer of staff from one scheme to another and to retain the rights within the current scheme that they are in. It may be helpful if I provide those particular clauses and provisions in the Bill that cover the issues around the fair deal policy.
203. **The Chairperson:** OK. In regard to the £262 million figure again, in tab 2D of the Bill folder, page 2 of annex A, there is a letter that the Government Actuary's Department sent to DFP. In that letter, GAD stated:  
  
*"the costs in respect of the other Northern Ireland schemes will be different and we would be happy to provide estimates of the costs for those schemes."*
204. Did DFP respond to that or take up that offer?
205. **Mrs G Nesbitt:** No.
206. **The Chairperson:** Why not?
207. **Mrs G Nesbitt:** The cost of using GAD is very high. That would be the first point.
208. **The Chairperson:** How much would it be?
209. **Mrs G Nesbitt:** I cannot give you an exact cost. The cost of the initial estimate that we got was around £10,000 or £11,000. So that was the first thing. There is a cost. We know that there will be a cost if we do not implement the key provisions of the Westminster Bill on time. We are aware of that, and I think that the issue is what the quantum of that cost will be, so I emphasise that there is a cost. It is about how much we want to spend refining that cost figure and how wise a use of public money that is. That is the first point.
210. The second point is that to go in, scheme by scheme, and do a detailed

- piece of work, you really are talking — if any of you have any experience of using GAD, you will know that it is very expensive. That is not a reflection on them. The cost of doing that scheme by scheme and getting a more detailed, refined analysis would be thousands and thousands of pounds. I can reflect on that and try to give a more accurate figure, but it could be over £100,000 per scheme.
211. **The Chairperson:** The point is that we do not actually have any real indication of how much would be saved. The Minister obviously majored on that particular figure, but he did not major on the fact that there is a huge health warning attached to it. It certainly affects the confidence the public may have in this Bill that this figure has been attached to it. The offer from GAD was not taken up, and it is effectively a figure for health, as opposed to the public sector as a whole.
212. **Mrs G Nesbitt:** I have always been clear, and Minister Wilson has always been clear when he has been giving information about the structure of and rationale for the costs, that indeed it was based on health. The figure for health representing 7% of the pensionable pay bill was applied across the other schemes to give an estimate and a sense of the quantum that we are talking about. In my previous session before the Committee, I indicated that the figure could be half wrong or half right depending on way you want to look at it. However, even if it was out by that much, we would still be talking about a huge impact on the Northern Ireland block.
213. **The Chairperson:** What is the margin of error on the figure of £262 million?
214. **Mrs G Nesbitt:** I could not comment on that. I am not a government actuary.
215. **The Chairperson:** Then how do we know?
216. **Mrs G Nesbitt:** I am just giving that as an example.
217. **The Chairperson:** It is a very rough figure, then.
218. **Mrs G Nesbitt:** Yes, but if I was looking at something as an individual and trying to think, to me, 50% out — given that the Government Actuary's Department is well qualified, and it decided to look at the health scheme. We explained what we wanted, and it picked health, I suspect because it is the biggest scheme in Northern Ireland. I surmise that, even if that figure was half wrong — I am not an economist or a government actuary —
219. **The Chairperson:** As a 50% —
220. **Mrs G Nesbitt:** Even if it was 50% wrong, as a taxpayer in Northern Ireland, I would think that that would be a huge hit. We would lose £131 million. I am not saying that it is 50% wrong. I am just giving that by way of example. The sense that we wanted to convey to the Executive was that we are talking about a lot of money.
221. **The Chairperson:** Henceforth, are there any plans to try to tie down a more specific estimate through GAD or any other avenue?
222. **Mrs G Nesbitt:** Not at this point. The further work that is required would be for each scheme and each responsible Department and Minister to consider, if they wanted to go down that route. That is really what GAD is saying. To do more detailed work, it would need to look at each scheme, scheme by scheme. There are variances within the scheme; I accept that. That is why we have been clear in saying what the basis of the figure was, that it was an estimate, that it was based on health and it was — *[Inaudible.]* So it would be for each scheme and for each Minister to determine whether they wanted to spend more money on their particular sector and scheme and to engage GAD and to do more work.
223. **The Chairperson:** Has that been proposed to other Ministers and Departments?
224. **Mrs G Nesbitt:** The information from GAD has been shared, so they are certainly aware of it. It is up to them to

- decide whether to do it. That would be a matter for each scheme to decide.
225. **Mr Mitchel McLaughlin:** We have to try to be fair to everybody. If this revolves around the debate about the impact on the block grant, and we have a figure that nobody appears to be able to stand over, even if it is 50% wrong, which, by the way, would be an awful headline, if it goes out of this discussion, we still would not have room to manoeuvre, even though it is accepted that there is significant room for variance in how the scheme is applied here.
226. **Mrs G Nesbitt:** I will pick up on that, but it may not be the answer that you are expecting. Just to be clear, because I am reluctant to see a headline in the 'Belfast Telegraph', 50% is my sense as an individual —
227. **Mr Mitchel McLaughlin:** You might be too late.
228. **Mrs G Nesbitt:** I might be, and then I will be called to answer. I am just giving that, as a sense, to say it was an estimate. I have always been clear with the Committee and in every forum to say that that was an estimate. I am just giving you an example. I think that 50% wrong would be unrealistic; I would be amazed if the estimate was 50% wrong. I want to be clear about that and put it on the record. I am saying that if it was at the extreme of 50% wrong, it would still be a huge amount of money for the Northern Ireland block to lose. It was in that context that I was using the 50%.
229. I will pick up on Mitchel McLaughlin's point on the variances of scheme. We provided you with information on that. A cost envelope will be determined for each scheme within each sector, and, within that, there will be scope for variances in the detail of the actual scheme rules and the specifics of the scheme. That is where a particular Minister has scope and has it within their remit to vary that. That was conveyed some time ago. If they stick within the overall cost envelope that is determined for their scheme, there is, obviously, no wider cost consequence for Northern Ireland. However, it has also been made clear that if they decide to be more generous with some aspect of their scheme, and it goes outside that cost envelope, the thinking is that that extra cost would be drawn from whatever the spending was on that particular sector. Our Minister thought it was important, and I thought that it was important, that other Ministers were aware of that. So, a Minister, if he wanted, could spend more on their particular scheme, but they would have to meet the extra cost from their sector's budget. I am not sure if that is what you were touching on or not.
230. **Mr Mitchel McLaughlin:** No, it is; it is fair enough. You are setting it out from a particular perspective. We all understand that. However it is done, it comes back to the question posed by the Chair. First of all, GAD tells us its methodology, and it accepts as a matter of fact that the cost of the other schemes here will be different. It just tells us that they will be different. That begs the question: why do we not just establish the facts? Quite often, we get a cost argument against doing what otherwise would be regarded as good and prudent business practice. You would not put together a business plan without evaluating the costs. If we are getting an estimate based on one particular scheme, and that is applied across all the others, and the authority that is doing that tells us that the outcomes will be different for those respective schemes, I do not understand why your Minister has not even engaged in discussions encouraging collaboration across the Executive to commission a comprehensive costing so that people know.
231. I think we have to be fair to everybody, going back to my starting point. A cost to the block grant would be regarded as a significant aspect, but a cost to individuals is hugely important as well. We are talking about people who are considering having an extended working life over and above what they had expected, up until relatively recently, or a retirement of penury and

- poverty. I do think that there are other considerations. If there are variances that can be applied regionally, I want to have a good, hard look at them, and I certainly want to be convinced that the Executive have taken a good, hard look at them.
232. Let me give another example. We are told in the trade unions submission that unions have pressed for, and to date been denied, with the exception of NILGOSC, the full scheme triennial actuarial assessments. Why are they not being given that information? Why do we not do business in a more sensible, open and transparent fashion? They have to justify to their members their stance in negotiations and what they agree to. At times, that can be a very unpalatable experience. Why are we withholding information that is relevant to that discussion?
233. **Mrs G Nesbitt:** Just to be clear, it is not that we are withholding information that we have. That information is not available, because those valuations were suspended and did not happen. Minister Wilson wrote, some time ago, to other Executive Ministers to advise them of that. That has not been challenged by any Executive Minister. The reason why the valuations were suspended was —
234. **Mr Mitchel McLaughlin:** Sorry. Could you just explain, as you are going through that, who suspended them?
235. **Mrs G Nesbitt:** It was the line that was taken, certainly by the coalition Government, and other Executive Ministers here were written to and advised of that. I can check, but I do not recall getting any response about that.
236. **Mr Mitchel McLaughlin:** I am trying, because it is relevant, to get at whether our Ministers, either by omission, neglect or commission, suspended the process, or was the decision made at Westminster and not challenged? Which was it?
237. **Mrs G Nesbitt:** The decision was taken at Westminster, and it was then up to us to consider what stance —
238. **Mr Mitchel McLaughlin:** So, we could have produced —
239. **Mrs G Nesbitt:** In theory, yes; we could have gone ahead. A Minister here could have decided to proceed with their valuation, had they wished. To my knowledge, that did not happen.
240. **Mr Mitchel McLaughlin:** Did your Minister, and our Minister, give them an option or a recommendation?
241. **Mrs G Nesbitt:** I will just check the correspondence and respond to the Committee in writing on that. That correspondence was some months ago. I will check that and provide you with a written update.
242. **Mr Mitchel McLaughlin:** I have one final point, which I addressed in the earlier session, so you may have picked up on it. Clearly, there is a difficulty. There is no point burying our heads in the sand. I have described it as a cake that was baked by someone else, and we as an Administration have the job of dividing it up as best we can.
243. **Mrs G Nesbitt:** I could not possibly comment on cake baking.
244. **Mr Mitchel McLaughlin:** And some cakes taste better than others. *[Laughter.]* Decision-making requires that you create or identify some other forms of revenue to provide that extra expenditure or you identify a programme spend that you will abandon to give you that flexibility.
245. **Mrs G Nesbitt:** Yes.
246. **Mr Mitchel McLaughlin:** An argument is being made here that the methodology that has been applied to produce an estimated cost will impact on the block grant. That is probably not the best way to run a business. You should know what the costs are. If you were in business, you would be very determined to know precisely what the factors were. Can we not have an approach that provides full information to Assembly Members, who are going to vote on this; to Ministers, who are going to make decisions; and to the

- trade union side, which has to represent the staff side in all this? Can we not have factual assessments, including the socio-economic impacts? If we extend the working age programme, that will have a direct impact on accessibility to the labour market for people leaving school and coming into the labour market, graduates who are looking for career opportunities and people who are looking to return to employment. Decisions like this are key strategic discussions and have those impacts. We know that before we get into it, but we do not quantify what those impacts are and factor that into the block grant. Has the Department, or have you as officials supporting your Minister, considered commissioning that type of study? That would tell us what the holistic impacts and costs involved in this change of policy are — a policy that is being driven from Westminster and applied here.
247. **Mrs G Nesbitt:** It is an issue that trade unions have raised with us in the meetings. It has not been considered to date, and it was not requested at any stage by any Minister. It certainly was not requested when the Executive made the decision, on 8 March last year, to adopt this policy.
248. **Mr Mitchel McLaughlin:** I know that if I ask you whether you considered it and provided an options paper, you would not tell me, because it is private between you and the Minister. Is that not right? *[Laughter.]*
249. **Mrs G Nesbitt:** I am sure that you are absolutely right, and thank you for your guidance. *[Laughter.]*
250. **Mr Mitchel McLaughlin:** The Committee may take a view on some of that stuff. Thank you very much.
251. **Mr D Bradley:** You mentioned the general issues that were raised in the consultation and said that you would come back to brief the Committee in May.
252. **Mrs G Nesbitt:** Yes.
253. **Mr D Bradley:** What will you have back for us in May?
254. **Mrs G Nesbitt:** We hope to have our collective response to the consultation responses that we have received. There will be a document provided that sets out that in detail, because some of the responses that we have received are very detailed. That is why I am not in a position to comment today. Just as we have updated you on previous consultation exercises, this will follow the same pattern; we will be able to give you our view then, but I am not in a position to give it today.
255. **Mr D Bradley:** What is the timeline for the draft Bill?
256. **Mrs G Nesbitt:** We still hope to adhere to the timeline that was already provided to the Committee for the draft Bill, so we intend to have it introduced in the Assembly prior to summer recess.
257. **Mr D Bradley:** OK.
258. **Mrs G Nesbitt:** Sorry, if I can just elaborate, obviously it will have to go the Executive in advance of that, and obviously there will be further sessions with the Committee late in May. Indeed, I think that one session is already pencilled in for 19 June, and there may need to be more sessions.
259. **Mr D Bradley:** Remind me of the time schedule for the Bill. You said that it would be introduced in the Assembly in June?
260. **Mrs G Nesbitt:** Yes.
261. **Mr D Bradley:** Will the Committee Stage run, then, through the summer?
262. **Mrs G Nesbitt:** Yes. The Committee Stage will actually run from July to November, because obviously it is over the summer months.
263. **Mr D Bradley:** Thank you.
264. **Mr Girvan:** Thank you for your presentation to the Committee. I want to come back to a point. I appreciate that we are dealing with information that we do not have a full picture of, and I understand the costs associated with getting some of that information. However, we are attempting to deal with

- it. People are coming forward. I may have picked it up wrongly earlier, but a figure of £300 million was mentioned for youth unemployment. I want to make sure that that is the figure.
265. **Mr Mitchel McLaughlin:** That is the figure that we were given, yes.
266. **Mr Girvan:** That £300 million would equate to somewhere in the region of 4.1 million young people being unemployed in Northern Ireland. It must be calculated on a national scale, because it could not equate to Northern Ireland. We know what the benefit rates and suchlike are and how much that would cost. I want to try to extrapolate more detail of where the £260 million is rounded up across all the Departments. I appreciate that they have only focused on one specific area and a 7% calculation of what their take is. It would be helpful, from our point of view, to have the other information. I know that a decision has to be made as to whether we spend to extract that full detail. Some amendments have already gone through. How do they vary what was originally proposed? It is relatively early days, but it would be helpful to get some of that information back.
267. **Mrs G Nesbitt:** We will certainly reflect on the amendments to the Westminster Bill during its passage. I emphasise that I am not an actuary, but I do not think that there is anything that would be substantial in the initial work that GAD did for us last summer that is going to have an impact on its estimate of £262 million. We will consider that, look through it and provide that information to the Committee.
268. **Mr Girvan:** I would appreciate that. My other point is in relation to some ignorance, maybe, as to where our budgets come from. We have one budget, this pension budget. If we make any variance to what has been approved at Westminster, it will have a direct impact upon what Departments have to spend, as it will be clawed back, as opposed to trying to link it into another budget, the social security budget, which is not attached to our block grant. Therefore, as a rule, the people of Northern Ireland will not have their public sector services affected because of any variances that we make. That is just for clarification on that point, because it was brought out earlier.
269. We now need to look at more detail in relation to other Departments, so that we can at least make a measured judgement. In some places where you will say that is well worth taking the hit for that amount, if this is what we can deliver for it, we have a judgement to make. You can only make a judgement when you have the full picture. I work on the basis that if they were 25% wrong, we would still be in and around £200 million well, £197 million so that is another way of looking at it. However, I cannot see them being that far out. If they were briefed to come up with a fairly accurate figure, a ballpark figure, as to where this is going to hit, we need to know the full facts. I appreciate that to do that might mean going back and asking the direct questions. The time frame for doing so is getting narrower. However, we need to have more information.
270. **Mrs G Nesbitt:** We will consider that, and it will be for each Minister and Department to decide whether they want to make that expenditure to get a more refined estimate for their particular scheme and sector. It will be extremely costly, but it will be a decision for each Minister and Department. Certainly, we can relay that back, because we have a meeting tomorrow with officials. It is something that they have been asked to consider.
271. **Mr Cree:** It looks like a disappointing result, then, from the consultation.
272. **Mrs G Nesbitt:** Yes.
273. **Mr Cree:** I take it that each scheme has its own actuarial advice setup. Is that true?
274. **Mrs G Nesbitt:** Each scheme does, and most use the Government Actuary's Department. Only the smaller ones —

275. **Mr Cree:** They would use the Government Actuary's Department?
276. **Mrs G Nesbitt:** Yes.
277. **Mr Cree:** That is disappointing. If they are using that, surely we have all the information that we need? If the individual ones are working with GAD, as you call it, all that information must surely be there. The value of the schemes must be there.
278. **Mrs G Nesbitt:** No. Sorry. Let me clarify that. The exercise that we did last summer was a special exercise to see what the cost would be. Just to reiterate, the exercise was commissioned to look at the cost of delay and to try to give an estimate for it. That work has not been carried out by each scheme, so for that figure to be more refined, scheme by scheme, each Minister or Department would have to request the government actuary to come in and do that specific piece of work. Most of the main schemes — in fact, probably all of them — use the Government Actuary's Department in their normal scheme valuations and the exercises that they have to carry out. They have not commissioned this piece of work to date.
279. **Mr Cree:** You said that the cost of that would be quite high. However, I suggest to you that most of that work has already been done with the individual schemes by way of annual reports. No?
280. **Mrs G Nesbitt:** No. It is not done. It would have to be a special exercise and it would be quite a detailed and expensive piece of work to do.
281. **Mr Cree:** How would it vary from the overall financial statement at the end of each period?
282. **Mrs G Nesbitt:** That is based on the old scheme. This is looking at going forward and implementing the new scheme. That detailed information would have to be obtained. A special exercise would have to be carried out by the government actuary. It has not been done. However, it is a fair point that —
283. **Mr Mitchel McLaughlin:** Would you mind my asking a supplementary question on that?
284. **Mr Cree:** Go ahead.
285. **Mr Mitchel McLaughlin:** You have a costing based on delay.
286. **Mr Cree:** Yes.
287. **Mr Mitchel McLaughlin:** Was that a delay for a day, three months or a year?
288. **Mrs G Nesbitt:** It was estimated for the first year of delay. As I have said before, that figure may go up if we delay for more than a year.
289. **Mr Mitchel McLaughlin:** So, if we delayed for a week, it would not be £262 million?
290. **Mrs G Nesbitt:** Absolutely not. I am sure that somebody could do a sum and give the daily rate.
291. **Mr Mitchel McLaughlin:** I am making a point. We would not go for the most expensive option just to get it out of our system; would we?
292. **Mrs G Nesbitt:** Absolutely not. If you like, I can divide that by 365 and present what the daily rate would be.
293. **Mr Mitchel McLaughlin:** I do not think that you need to do that, but it would be very interesting to see the terms of reference in case we decide to apply it across the other schemes.
294. **Mrs G Nesbitt:** To be fair, I have always made it clear that that is the cost of delay for a year. I do not think that I ever claimed that it was for a day.
295. **Mr Mitchel McLaughlin:** I missed that point, then, all along.
296. **Mrs G Nesbitt:** Did you think that it was for a day?
297. **Mr Mitchel McLaughlin:** No, I did not. *[Laughter.]*
298. **Mrs G Nesbitt:** I just wanted that on record.
299. **Mr Mitchel McLaughlin:** And I do not think it is — well, I had better not say that.



300. **Mr D McIlveen:** It is not your salary we are talking about, Mitchel.
301. **Mrs G Nesbitt:** I could not comment.
302. **Mr Mitchel McLaughlin:** When you were talking about 50%, I thought that you were talking about what I give to my party from my salary, but you do not talk about that either.
303. **Mrs G Nesbitt:** I could not comment on that one.
304. **Mr Girvan:** You are very generous. That is a heavy rate of tax; it really is.
305. **Mr Mitchel McLaughlin:** You better believe it.
306. **Mrs G Nesbitt:** Moving swiftly on —
307. **The Chairperson:** Grace, before we finish, can I get agreement that all consultation responses will be copied to the Committee for information?
308. **Mrs G Nesbitt:** I want to check that that is absolutely acceptable in respect of data protection. I am hesitating because we might need to redact some bits, but there is certainly no problem with that.
309. **The Chairperson:** OK. See you in a few weeks' time.
310. **Mrs G Nesbitt:** Thank you very much.



## 24 April 2013

### Members present for all or part of the proceedings:

Mr Daithí McKay (Chairperson)  
 Mr Dominic Bradley (Deputy Chairperson)  
 Mrs Judith Cochrane  
 Mr Leslie Cree  
 Ms Megan Fearon  
 Mr Paul Girvan  
 Mr John McCallister  
 Mr David McIlveen  
 Mr Mitchel McLaughlin  
 Mr Peter Weir

### Witnesses:

|                    |                                              |
|--------------------|----------------------------------------------|
| Mr Harry Baird     | <i>FDA</i>                                   |
| Mr Jim Quinn       | <i>Fire Brigades Union</i>                   |
| Mr John O'Farrell  | <i>Irish Congress of Trade Unions</i>        |
| Ms Nuala O'Donnell | <i>Irish National Teachers' Organisation</i> |
| Mr Bumper Graham   | <i>NIPSA</i>                                 |
| Mr Martin Toal     | <i>UNISON</i>                                |

311. **The Chairperson:** I welcome Bumper Graham from the NI Public Service Alliance (NIPSA); John O'Farrell from the Irish Congress of Trade Unions; Martin Toal, representing UNISON; Nuala O'Donnell from the Irish National Teachers' Organisation; Paul Hardy from the Prison Officers Association; Jim Quinn from the Fire Brigades Union; and Harry Baird from FDA.
312. **Mr John O'Farrell (Irish Congress of Trade Unions):** Mr Paul Hardy sends his apologies.
313. **The Chairperson:** OK. I open it to you first, and we will then take questions from members.
314. **Mr Bumper Graham (NIPSA):** In opening, I have a couple of points to make. The consultation date passed, and submissions have been made to the Department of Finance and Personnel (DFP), including the omnibus submission from congress and from

each of the unions with its separate submission. We are concerned that the Department of the Environment (DOE) has issued consultation and draft regulations to introduce the revised Northern Ireland Local Government Officers' Superannuation Committee (NILGOSC) scheme from April next year, ahead of the Public Service Pensions Bill. The proposals there are predicated on what is in the Bill, namely the move to a career average and the linkage of normal pension age with state pension age. We do not think it appropriate for the Department to do that ahead of the main primary legislation.

315. We have also raised serious concerns in all the submissions about the inadequate screening exercise that was carried out. En route to the Equality Commission is a letter complaining about DFP's screening exercise, which was, at best, inefficient and, at worst, constructed to arrive at a deliberate decision to screen out the policies. We can see no good reason why it screened those out, because the changes are fundamental. It also failed to pick up information that is available in the various schemes. Those are the main issues since we last met.
316. Unfortunately, I was not able to listen to yesterday's ping-pong debate because I was caught up in other public service matters, but I hope to check the Hansard report over the next day or two. We need to see the final shape of the Westminster Bill. There is some indication that, not surprisingly, government will reject some of the Lords' amendments.
317. **The Chairperson:** We discussed cost-neutral amendments to the local Bill. Are there any specific provisions that the trade unions wish to see in the Bill, particularly in regard to fair deal?
318. **Mr Graham:** Yes. Things have gone somewhat silent at Westminster on the

- three papers issued in November, one of which was on fair deal, and two of which were on the future arrangements for triennial reviews and the Treasury's role in that. As we said in our submissions, we want to see fair deal in the Bill. I do not want to get into the wider debate, but it would be preferable not to have fair deal, as we only have to have it because we face the externalisation of public services to the private sector. However, it is important that it be in the Bill.
319. **The Chairperson:** For members' benefit, will you give us a wee overview of that?
320. **Mr Graham:** In essence, fair deal provides that when people transfer to the private sector, they can remain with whatever public sector pension scheme they are in. Some of the reasons for that are that a number of private sector contractors do not offer pension schemes that could be deemed to be broadly comparable and that — this is a peculiar point — it is advantageous for some private sector bidders to pay just the costs of scheme retention rather than establish their own schemes.
321. **The Chairperson:** Would that apply regardless of length of service?
322. **Mr Graham:** Yes. Likewise, and we have experience of this, if someone is on their second, third or fourth contract because company A won the original bid but company B won the re-tendering, it stops people having to have three or four different pension schemes and trying to analyse and measure the value of one pension scheme against another. Our ultimate aim, I suppose, is that when all those services are returned to their rightful place — the public sector — those people can seamlessly continue with their public service pension schemes.
323. **Mr Martin Toal (UNISON):** Can I make a point to reinforce fair deal? It came about as a result of negotiations on the mainland under the last Labour Government, and it came out when some of the schemes were changed in 2008, which were supposed to underpin those for the next 25 years. However, we now find that the underpinning seems to be suspect. Along with what Bumper said, it was also meant as a means to protect the scheme itself in order to give some protection to individuals, because the unfunded schemes depend on people's contributions coming in. Those contributions make the scheme dependent because you are bringing younger people in as older people exit; their contributions go in the form of the unfunded arrangement in order to do that. It was a means of addressing some schemes not becoming "cash poor". It was bilateral: it was to offer protection for individuals if they were outsourced or had to change employment for one reason or another, but it was there also as a means to protect the scheme.
324. **The Chairperson:** In regards to paragraph 31 of your paper, can you give any more detail on the proposal to establish a review group — similar to that established for the NHS scheme — to examine the increased normal retirement age for various occupational groups across the schemes? What would its status be? For example, would it need to be legislated for? What would the implications be for any recommendations that it might make about lower-than-normal retirement age for some groups?
325. **Mr Graham:** There have been very limited bilaterals in Northern Ireland. There were some bilateral discussions in the DOE review group when it was propositioned to establish a group similar to the one for the NHS in England and Wales. Our proposition is that it would make more sense to have a single review group rather than all the schemes here having their own review groups. Part of the propositioning on that goes back to the point that we laboured last time about the impact of increasing the age of retirement and what that could do to ill-health retirements. From an efficiency point of view, we think that a single review group should be established, perhaps on your recommendation, which could look

- at that across all the schemes rather than multiplying it across the different schemes.
326. That also feeds into the point we made about the concept of a flexible decade of retirement: some people might be happy to retire earlier; whereas others would be happy to stay on past state pension age. The hope is that it may be cost-neutral. Even if it was not, it gets to the point about the macro-economic situation. Since we were last before the Committee, we have had further work done by the Nevin Institute on the quarterly economic report, which for spring this year concentrated on Northern Ireland. Significant issues of youth unemployment arise out of that report. We can get copies of it for you. If we do not tackle youth unemployment, we will build up big problems for ourselves. We see a correlation between youth unemployment and increasing the age of retirement for public servants, because that will reduce the number of jobs available for our young people in public services. The review group could tie much of that together. It may also be able to deal with the issue that —
327. **The Chairperson:** Is there reference to that particular point in the Nevin report?
328. **Mr Toal:** There is no specific reference to pensions: it concentrates a fair degree on labour market issues when dealing with youth unemployment in Northern Ireland. However, it goes without saying that if you require public servants to work an extra five, six or seven years, they will be staying in those jobs and will not be creating the vacancies at the other end for young people to take.
329. **The Chairperson:** It would be useful for us to get some empirical evidence on that.
330. **Mr Graham:** We might ask the Nevin Institute if that is something it can do.
331. **Mr Harry Baird (FDA):** I will reaffirm some of the things that Bumper said. My background is in health. Unlike some of my colleagues, I am not a full-time official; I am a lay member of UNISON, trying to do a job in something that is very precious to us. When I look across the boundaries in health and at the colleagues I work with, I find it difficult to reconcile how some of those people would work to 68. When we link the normal retirement age to the state pension age, I think that the long-term objective, certainly of the Government across the water, not our own, is to provide state benefit pension at 70. Before you decide, spend a day working with people in a mental health hospital in your constituency; or work for a day in an intensive care unit to see whether you would be fit and able to cover the demands of those jobs at 68 or 70 years of age. My analysis is that you would certainly not.
332. At present, people who work in mental health are given early access to go at 55 because it is very difficult to meet the demands posed in that area when you have punched in 30-odd years in that environment. It is a dangerous proposal to link those. In the Department of Health, there are jobs that are not your ordinary nine-to-five office jobs that you may well be able to do until you are 68. The demands and dynamics in health are very different.
333. **Ms Nuala O'Donnell (Irish National Teachers' Organisation):** Nobody wants their children to be taught by somebody who is 68 or 70, and there are very good reasons for that. Dealing with young children or teenagers becomes more difficult as you get older. It is well known that there is a lack of opportunities for young teachers to get jobs. If teachers have to remain in post because they cannot retire, or cannot afford to retire, and if there are actuarial reductions before those ages, there will be fewer jobs for young teachers, and we will have more problems with the ill health of teachers, as was mentioned earlier. It is incredibly difficult, particularly when you are dealing with very young children and teenagers. Teenagers will exploit older teachers. There are many issues that need to be taken into account. The linking of the normal retirement age to the state retirement age is the major problem, because if it is not linked, it

- leaves the flexibilities in the schemes to look at what is appropriate for each scheme, as opposed to the linking of it taking away that flexibility.
334. **Mr Graham:** I did not get the chance to follow yesterday's debate in Westminster, because I was defending public servants in the annual witch-hunt against them that follows the Audit Office report on absenteeism. There is a linkage because if we raise the normal retirement age, trends will, over time, worsen rather than improve, as there is clear evidence that absences, particularly long-term absences, are greater among older people. Martin mentioned some of the illnesses and industrial injuries that people pick up. I will probably have a new bow to use when the annual witch-hunt report comes out.
335. **Mr Mitchel McLaughlin:** For me, the discussion nearly circles around paragraph 27 in the omnibus submission.
336. As with welfare reform, we are an Assembly that does not have full fiscal authority, so, in that sense, it is more of an administration than a government. It is a question of dividing a cake that is baked by someone else as equitably as we can. Often, what confronts us, as with this particular issue, is what areas of programme funding would you shut down to finance a local response to what has been developed at Westminster? It is simply to state the facts and to explore what we can do about that. I share the cynicism or the scepticism about some of the figures that are produced to scare politicians here when looking at the range of options and developing local solutions to local problems.
337. **Mr O'Farrell:** There is a point to be made on that, which dates back to the Executive's original decision to proceed with this idea at a meeting in March 2012. As I am sure you are all aware, the issue had been put on the agenda of the Executive for two meetings, but it had not come up, so the Finance Minister invoked a "three strikes and I'm in" rule whereby it had to be discussed. There is an issue of the willingness to have it discussed in the first place.
338. The second question, therefore, is what information did the Executive have before them when they made that decision? Since we last met the Committee, we have received a paper from the Government Actuary's Department estimating how it came to the now legendary £262 million a year figure. There is a serious flaw with that on two levels. One is the actual calculation, and Martin Toal may shed some more light on it because it was based on one scheme — the health scheme — and extrapolating it out. There are problems when you try to extrapolate that.
339. **Mr Mitchel McLaughlin:** It was very well described.
340. **Mr O'Farrell:** I am glad that the Committee is clear on that. A second concern, which arose during negotiations, was how much information the Executive had when they decided to proceed. If their decision was based on a flawed prospectus, the complication is that the Executive have decided to proceed with it, so we are going to proceed with it. That is the catch-22 that we are in at this stage in negotiations, and it is a major problem. Therefore, the Committee should examine the case for introducing this legislation lock, stock and barrel. It is an issue on which a degree of railroading is going on.
341. As Bumper said, NILGOSC is now looking at regulations, which, to put it politely, is jumping the gun a little. Our concern is that the Committee, the Assembly that you are all elected to, the Executive and the 250,000 people who will be directly affected by this are being railroaded based on inadequate information. The Committee has a role in taking a very strong look at the primary legislation as it goes through the Assembly. However, the secondary legislation — the regulations — are of key importance.

342. **Mr Graham:** You mentioned the cost. John has dealt with the fiction that is the £262 million figure. It goes back to the point that I made about the impact on youth unemployment. Youth unemployment is costing Northern Ireland £300 million. If we can open some job opportunities to young people, there will be a saving on the £300 million. As it says in the quarterly report, and we will provide it to you, there is not just the immediate £300 million cost as a consequence of youth unemployment. You will find that if people do move into employment, it is short-term and poorer-paid employment, and there is a wage scar that lasts 20 or 30 years.
343. I accept your point. This is an imperfect place, particularly because of the way in which the funding aspect is dealt with. We are constantly being asked the question: “what are you going to take from x to give to y?”. Here is an example of where there is an opportunity not to give up anything from people’s existing pension rights but to create labour market opportunities for young people. Youth unemployment in Northern Ireland is one of the greatest issues that we have to face.
344. **Mr Mitchel McLaughlin:** What I was trying to tee up was a little short-circuited. I think that we can rightly be suspicious of the figures presented to us. One of the reasons why the issue was not taken up when it was first put on the agenda for the Executive had more to do with the fact that it was still a work in progress as far as Westminster was concerned, and there was an argument that it was premature and that we did not know what the final outcomes would be, and that any economic modelling we did could be affected by changes or amendments that emerged in that process.
345. Setting that aside, is there a case for the trade union side either to produce its own macroeconomic analysis, so that we can have a common ground discussion, or to propose that the Executive and the trade union side collaborate on that approach and establish agreed thresholds and benchmarks to take this forward?
346. **Mr Graham:** We had hoped that, by raising the matter with you and in our submissions, somebody would pick up the baton. If they were to do so, we would be more than happy to work with them in providing an outcome to that research. If that is not going to happen, we would have to look seriously at whether we could commission somewhere such as the Nevin institute to do a piece of work for us.
347. **Mr Mitchel McLaughlin:** Would you consider it tactically better to suggest that there is a joint approach between the Administration here and yourselves? If that were rejected, you would move to the option —
348. **Mr Graham:** That would be our fallback.
349. **Mr Mitchel McLaughlin:** OK. Perhaps our Committee will consider —
350. **Mr O’Farrell:** That would be worth doing. We could not really do it on our own because we would not have access to, for example, the full set of figures.
351. **Mr Mitchel McLaughlin:** That is why I am suggesting what I am suggesting.
352. **Mr O’Farrell:** Speaking of figures, I would like to make a small point in relation to some of the points that Bumper made. I came across an interesting figure last week when looking at some UK-wide figures for graduate employment. As you are aware, Northern Ireland is quite proud of the fact that we have a much higher rate of people attending higher or further education than there is in most other parts of the UK. At the same time, we have a concern over what is popularly known as the brain drain. This is the interesting part of the figure: roughly 35% of the population of Northern Ireland has a degree or diploma. However, of all the jobs in Northern Ireland, only 25% are at graduate level. That is an interesting cut. Where do the graduates go? They go either into jobs for which they are overqualified or they go elsewhere.

353. It is worth noting — and this is why I am raising the point under this particular concern to do with the public sector — that the public sector is the main employer of graduates in Northern Ireland. Compared to the UK, and certainly compared to London, there are very few graduate jobs in our private sector. Something like 75% of all graduate jobs in the UK are based in or around London, and particularly in the corridor between London and Cambridge. The remaining 25% of private sector graduate jobs are scattered throughout the rest of the UK. Northern Ireland, as I say, has a shortfall. So, not only are we talking about young people not getting an opportunity to get public sector jobs, we are actually talking about fewer young people getting quality jobs; in other words, keeping our graduates here.
354. It is not enough to employ young people in Northern Ireland in jobs that do not pay very well and do not have great career prospects. The danger is that we are removing another layer, on top of things such as the recruitment freeze that has been operating in the public sector for the past four years. We are adding to the complex issues and the long-term problems that are coming out of the brain drain.
355. **Mr Toal:** I will try to evaluate this from a layperson's point of view. I am not an actuary or a professional on this, but I will give you some of the dynamics involved. If I were going to analyse the figures, I certainly would not predicate it on the health scheme. It is not that the health scheme is any more difficult than the other major schemes, but the diversity and background in health makes it so different. It is such a difficult area to deal with.
356. Some of my colleagues may have briefed you on this, but when you look, as we have under Agenda for Change, at where people lie in the banding structure, the majority of health staff lie in bands 1 to 5. They are the domestic workers and porters through to the first-line health professionals such as nursing staff or allied health professionals. That is where the bulk of staff lie.
357. You then have the other dynamics: the senior managers and the medics. Every medic coming into the health service will have in their mind the objective of becoming a consultant by the time they retire. The promotion increase for those people does not appear in any other sphere in the public service, nor does the money attached to it. So, you have a distortion when it comes to increases.
358. I remember being party to the changes that took place in the health superannuation scheme in 2008, and I remember the very same people who predicated this information to you saying that the changes made in 2008 made the health scheme sustainable and viable. Now, all of a sudden, we have that viability torn up and its sustainability removed. We now have a document, and it spooks me, too, Mitchel, because I see £262 million that may have to veer from some other area of public service.
359. While I was talking to the security guy outside, I was doodling about what this means in layperson's terms. Remember, the vast majority of the people in bands 1 to 5 are female. They are never going to have a full pension, and the majority of them are never going to work on a full-time basis because of obvious family commitments and having to take time off. So, there are two things that challenge the figures for the people in bands 1 to 5. For band 1 workers the people who sweep, clean and brush our hospitals the final point of the scale is about £15,000. That person will generally work 20 hours a week. However, let us say that they did work the full 40 hours: they would likely get a pension of about £4,000 a year. If they did not take that pension and got pension credit, the pension credit would probably be about £2,500 had they not opted into a pension scheme in order to put their money into it in the first place. This is the stark reality. Remember, most of these people are not going to see the promotional increases that other members in the health service see: they



- are not going to see the stratospheric figures that consultants see at the end of their medical careers. Most band 1 workers, who sweep and clean your hospitals, exit as band 1 workers with £4,000, if they have worked 20 hours a week for the full 40 years. That gives you some dimension.
360. These figures do not tell the whole story. Certainly, there is as much subterfuge lying under these figures as there is reality, because the people whom I represent, who are at the lowest end of the scale and who are getting the short end of the stick, do not see that being translated into their pay. A band 5 nurse is unlikely to work for 40 years: I have yet to meet many female staff who have exited with a full salary pension and have worked full time for 40 years. You are looking at a pension of about £6,500 or £7,000 for someone who has maintained life and limb and who has physically done all the things that people do in that sphere of work. That is the reality of it. I cannot translate these figures to some of the people whom I know in the branch that I represent. It is very difficult to see through the mist and see where some of this goes.
361. It looks so clear-cut when it is put like this: the overall pay bill in health sits at £1.5 billion; take 7% of that, and, all of a sudden, you will have £100 million; then, translate that to every single public service pension. It is such easy economics. These people are smarter than that. They should be made more accountable for how they got to that figure, given the reality that most of you will know from relatives or constituents who work in these areas. It is not just me, Martin Toal, telling you this. I am sure that your constituents will tell you this as well.
362. **The Chairperson:** With reference to equality, Martin mentioned the effects on female workers. Some have highlighted the situation pertaining to female firefighters and the fact that that has been screened out with a full equality impact assessment (EQIA). Can you give us any other examples, other than that of the firefighters, that might be flagged up during the full EQIA?
363. **Mr Graham:** We raised various issues in a number of submissions. One of the section 75 groups that we have concerns about are ethnic minorities who, like a lot of people, probably fall into lower-paid, part-time types of occupations. It is those groups of people who tend not to join pension schemes. Pensions are complex even for those of us who spend part of the day every day on them. It is much more complicated for people who do not have English as their first language to try to get through all the documentation involved with pension schemes. We pointed that out in the submission. There are also some general age implications with the various schemes and the specific cases that have been mentioned, such as the firefighters.
364. We fail to see how any fair and reasonable person could come to the conclusion that this has no section 75 implications. It is another classic case of DFP working backwards. It started with the decision that it wanted and then tried to fill in only some of the gaps. It was, at best, negligent in its work.
365. **The Chairperson:** Bumper, has the Department given any commitment to examine the feasibility of any of the proposals that you outline in the document?
366. **Mr Graham:** We have had two sessions. We have not made much progress, if any, in those two sessions. The Department still refuses to accept that pensions, as deferred pay, are a matter for negotiations. Minister Wilson got it wrong in an answer to an Assembly question when he stated that they will not negotiate on pensions because they are not pay. Every legal definition states that pensions are deferred pay.
367. **Mr Cree:** I have wee point on the fair deal, which is interesting. Bearing in mind that final salary schemes are virtually extinct in the private sector, who do you see paying the employer

- contribution if sections of people transfer to the private sector?
368. **Mr Graham:** If a private sector company wants to bid for and take on public service work, it has to take on the totality of the responsibilities that come with taking on that work. As part of the bid price, the company would be provided with information on the actuarial costs for the workforce and then have to build those in. As I said earlier, this is likely to be cheaper for the company than having to provide pensions and/or deal with the current situation. If the company runs a project — say it is a five-year contract — and it gets admitted body status to the local government scheme, its contribution rate would be higher than the vast bulk of the employers because it knows that it is a short-term arrangement. It would then also have to have a guarantee that, if it lost the contract at the end of the five years, it would pay a significant lump sum to meet future and contingent liabilities. If the contract passes to company B, the contributions are still being made, so the future and contingent liabilities do not arise.
369. **Mr Cree:** It may well be, of course, that those companies have a pension scheme that is cheaper to them. You treat it really as a non-cost to the business. You have not thought of the likelihood of some sort of ongoing subsidy.
370. **Mr Graham:** I do not consider public services as being a business for capitalist fat cats to make profit out of.
371. **Mr Cree:** Surely that idea is a bit old-fashioned.
372. **Mr Graham:** Not really. I heard Nigel Smyth yesterday saying that it is good enough for the public services to apply the same sick-leave conditions that apply in Great Britain. If it is good enough to apply those conditions, surely we should have consistency and he should not be running around looking to get corporation tax at 12·5%.
373. **Mr Cree:** I would like to continue this, but obviously — *[Laughter.]*
374. **The Chairperson:** OK, folks. Thanks very much for that.

# 22 May 2013

## Members present for all or part of the proceedings:

Mr Dominic Bradley (Deputy Chairperson)  
 Mr Leslie Cree  
 Ms Megan Fearon  
 Mr Paul Girvan  
 Mr John McCallister  
 Mr David McIlveen  
 Mr Mitchel McLaughlin  
 Mr Adrian McQuillan  
 Mr Peter Weir

## Witnesses:

|                    |                                              |
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| Mr Harry Baird     | <i>FDA</i>                                   |
| Mr Jim Quinn       | <i>Fire Brigades Union</i>                   |
| Mr John O'Farrell  | <i>Irish Congress of Trade Unions</i>        |
| Ms Nuala O'Donnell | <i>Irish National Teachers' Organisation</i> |
| Mr Bumper Graham   | <i>NIPSA</i>                                 |
| Mr Martin Toal     | <i>UNISON</i>                                |

375. **The Deputy Chairperson:** We have Bumper Graham from NIPSA, John O'Farrell from the Irish Congress of Trade Unions, Brian Ferguson from UNISON, Nuala O'Donnell from the Irish National Teachers' Organisation, Jim Quinn from the Fire Brigades Union and Harry Baird from the FDA. I welcome you all to the meeting and invite you to make an opening statement.

376. **Mr Bumper Graham (NIPSA):** Thank you, Chairman. I have a couple of quick points to make. We got the Department of Finance and Personnel (DFP) composite response only yesterday. We saw this morning the letter of 17 May to the Committee from the Finance Minister.

377. By way of introduction, given the comments about the Dracula film, if you wanted someone to make an argument for retaining blood banks, you would ask Dracula to do it; if you wanted someone to do the Treasury's dirty work, you would ask DFP to do it. Our initial view

of the composite response is that, like much else in this process, it is wholly inadequate and glosses over a number of the key points. Of concern to us is that the response adds weight to points made by one or two individuals and to the Northern Ireland local government officers' superannuation committee (NILGOSC) response. However, the NILGOSC response did not deal with policy; it dealt only with the administrative impact of the changes in the scheme. There is the usual dismissal of trade unions' comments, but, most worrying in relation to the response, is the decision to screen out the equality impact assessment. We heard from what has been said this morning and what is in the response that you cannot leave it to the secondary stage for each of the schemes. The Bill will provide the pitch, determine its dimensions and what game is played on it. Therefore, that needs to be properly and fully assessed. The team that you select for secondary regulations is important and that, too, needs to be assessed. However, it is critical that there be a full equality impact assessment at this stage.

378. We welcome the limited progress that has been made. The Department has now found some money to do further work that it has commissioned to the Government Actuary's Department (GAD) on the overall potential impact on the block. However, it seems to me that that is a gesture or nod towards the Committee's concerns and our own, because it will not be a detailed assessment; it will be another skimming of the surface. I am now thoroughly confused because contradictory evidence now comes from the Department as to how that will be baselined. Are the 2012 triennial evaluations happening or not? You can only truly base the cost when you know the full facts and figures; therefore, you must do the 2012 evaluations.

379. DFP conveniently misses the macroeconomic point. We have never argued that this will result in fewer jobs; rather, it is about displacement in the labour market. Even DFP officials should understand the simple notion that if you keep someone in work five years longer, someone else will not be getting that job for five years or until it becomes free. Youth unemployment costs Northern Ireland £300 million. Therefore, there is a correlation between youth employment and the wider macroeconomic issue of keeping people in work for a lot longer.
380. I turn to the letter from the Finance Minister. Fortunately, the Committee has picked up a number of the points that I would make. Who is the director of this film? Is it the Northern Ireland Assembly, with Members playing a key part, the Finance Minister or DFP officials? Or, as I suspect, is the real director — and perhaps the puppet master — the Treasury in London? I am not convinced, from what I have heard this morning, that there is any genuine attempt to engage trade unions properly in determining what those directions may be and consultation on how scheme evaluations should be done.
381. We have already covered the GAD assessment point. The letter is, to some degree, mischievous; it will not bring us to any better understanding. For instance, what we did not hear about, and what is not in the letter, is the health scheme that was used as the model for this. GAD based the current health scheme costs on 28%, although the Department of Health says that the scheme costs are 21%. That anomaly has yet to be addressed. Does the Department intend to revisit the health scheme when it comes to the GAD estimate?
382. Mitchell McLaughlin pressed the Department on the Hutton report. For my sins, I have met Hutton and read his interim and final reports. Hutton merely acknowledges that there are some macroeconomic outcomes from this, but he did not do an analysis, on a UK-wide or Northern Ireland basis, of the impact of his proposals. To be fair to him, he said that there will be an impact, but he has left it to others to assess what it may be.
383. We then turn to the economic priorities set by the Executive: dealing with youth unemployment and social deprivation. The Public Health Agency recently published figures showing that life expectancy for males varies from between 72·6 years and 80·1 years, depending on whether you live in a deprived area or in one of the most affluent areas. For women, the gap is slightly narrower: between 78·9 years and 83·4 years.
384. I assure you that of the hundreds of thousands of people whom we represent, not even 1% could be deemed to be living in the least deprived areas. When the average pension paid to a woman in the NILGOSC scheme is £2,800 a year, you can see that that puts them into the most deprived areas. Therefore, there are issues about inequalities around the age of retirement, but there are also inequalities in life expectancy and in the standard and quality of life that our retired members and citizens should expect.
385. I recommend the Institute of Economic Affairs report, 'Work Longer, Live Healthier' to you, but only if you are an incurable insomniac like me. It is probably one of the most turgid, inconclusive and inaccurate pieces of research that I have read in a long time. I noticed that the DFP officials —
386. **Mr Mitchel McLaughlin:** Is that why you recommend it to us? *[Laughter.]*
387. **Mr Graham:** It has not cured my insomnia. I noticed that the DFP officials were selective in their quotations, so I will be equally selective in mine. The report says:
- "On the whole, it is found that poor health is likely to precipitate retirement, and that this is likely to lead to a finding of a "false negative" effect of retirement on health. In other words ... poor health can lead to retirement".*

388. The point that we have been making about “cap and collar” is that if you make people work longer, there is more likely to be ill-health retirements. That is the most expensive cost in any pension scheme and, therefore, the cap will be exceeded. That is a direct consequence of the employer forcing people to work longer, which was not addressed in the DFP response to the consultation.
389. Those are the main points. The last session worried me slightly because it appears that there is a “race to the bottom” approach. Hutton said that he did not want this to be a race to the bottom. However, when the Pensions Policy Institute says that the totality of these pension reforms will reduce the value of pensions by 33%, you can hardly describe that as a rising tide lifting all ships. In effect, it will sink the value of public service pensions and put people in poverty for much longer.
390. I welcomed the point that was made that scheme valuations will be done by DFP. Will they be done by DFP or will DFP subcontract them to that very expensive outfit called GAD? We need to press DFP on whether it will be done in Northern Ireland or whether it will be merely subcontracted.
391. It seems to the trade unions that every time we appear before you and listen to DFP officials, and in our discussions with them, everything is built around this magic timeline. There is an indecent rush to meet the timeline rather than carry out a full and proper evaluation of the implications for the Northern Ireland economy and the impact on our members. DFP would rather tick boxes in its annual report to show that it has met timelines that have been set by a third party — the Treasury in London.
392. **The Deputy Chairperson:** Thank you, Bumper. Have you had any further engagement with DFP officials since our last meeting? If so, to what extent were your proposals examined by them?
393. **Mr Graham:** We have not had a meeting. I think that one is scheduled for the week after next, but there has been little or no progress. The only progress would be anything that is covered by what has been discussed this morning; the likes of asking GAD to do another skim on the £262 million.
394. **The Deputy Chairperson:** You mentioned the DFP response to the consultation and the equality impact assessments (EQIA). What other major issues do the trade unions have with the DFP response to the consultation?
395. **Mr Graham:** As I attempted to outline, it is not a weighted consultation response. DFP is paying as much attention to one person who says, “This is a good idea”, as it does to the trade unions representing over 200,000 people affected by this.
396. **The Deputy Chairperson:** So, you are saying that there is an imbalance?
397. **Mr Graham:** Yes, and DFP is cherry-picking where it thinks there are positives for it, and there is a negation in not dealing with the issues identified in the composite response from the Irish Congress of Trade Unions and in the various individual trade union submissions.
398. **The Deputy Chairperson:** You said at the previous meeting that you would write to the Equality Commission to complain about the Department’s equality screening exercise. Have you had a response to that letter? If so, will you share it with us?
399. **Mr Graham:** We did write to the commission, and we have had a response. The Equality Commission has taken the line that, rather than engage with us directly, we should seek to have an individual lodge a formal complaint, and it will follow it up through that methodology. We will share the correspondence with you.
400. **The Deputy Chairperson:** Thank you. How might the trade unions contribute further to establishing a full macroeconomic impact analysis of these policy proposals?

401. **Mr Graham:** We have done some work ourselves. At the previous meeting, we presented work done by the Nevin Economic Research Institute. I am conscious that DFP always wants to save money, so we are prepared to assist it in doing that. That is why we are suggesting a single review that would look at a wide range of issues, including the macroeconomic ones.
402. Also, rather than looking at it on a scheme-by-scheme basis, it would look at the impact of increasing the age of retirement. That should be a single examination. In England and Wales, the health scheme is looking at the impact on the health service of an increase in the age of retirement. That has been suggested to the Department of the Environment's review group here in relation to the NILGOSC scheme. We would be content for there to be a single holistic exercise embarked upon that looks at the totality of the issues, and we would assist DFP in its expenditure on such an exercise. We would contribute directly and also through the Nevin Economic Research Institute.
403. **The Deputy Chairperson:** What is your view on the move from the final salary pension scheme to the career average revalued earnings (CARE) option?
404. **Mr Graham:** It is fair to say that there are different views among the trade unions. Some people see it as a balancing of "high-flyers" and "low-flyers", as DFP calls them. I think we can find better terms; I would not seek to refer to workers delivering important public services as "low-flyers". It certainly provides equalisation to some degree, but I think you need to examine in great detail what it means for people in different case studies. Also, you have to look at the variable ages of retirement and the accrual rates in the different schemes. You cannot just pick an example from the Civil Service scheme and compare it directly to someone in the fire scheme, the teachers' scheme or the health scheme, because the age of retirement, the contribution rates that members pay and the accrual rates all differ.
405. **The Deputy Chairperson:** In your presentation, you criticised the Department for rushing too quickly with the whole process, but the Department would argue that delay is costly.
406. **Mr Graham:** I referred to that in the first evidence session, when the Public Service Pensions Bill was having its Second Reading in the House of Commons, and the Finance Minister asked Danny Alexander what would happen if, for technical or other reasons, as opposed to policy objections, we were unable to meet the deadline. The response was that it would be discussed at a forthcoming meeting of Finance Ministers. We have yet to hear whether it was discussed at that meeting, and, if so, what the outcome was. In any case, we question the figure of £262 million. I do not think that it is right, fair or proper to force the hands of the Assembly and to do detriment to our members on the basis of a timeline that was set not by anybody in Northern Ireland but by the British Treasury in London.
407. **The Deputy Chairperson:** In your view, what are the advantages of slowing down the process?
408. **Mr Graham:** Unless I say this, I will be accused of not being transparent. Anything that we can do to slow it down clearly assists our members in that they will not face the detriments. They might get this later, but if we can avoid them getting it sooner, that is a star for the trade unions.
409. To be fair, this is a devolved matter, and it is only right and proper that the Committee and the Assembly make a full and considered assessment of all the facts. Reference has been made to a decision of 8 March by the Executive, when they took the decision in principle. What detail did they have when coming to that decision? Likewise, we got the composite response yesterday. I am not sure when the Committee got it, but there is a letter of 17 May from the Finance Minister. How much detail did he have? Did he go through all the responses, or did he leave it to the inadequate composite response

- prepared by DFP officials before coming to the view that he is content?
410. **Mr McQuillan:** What research have you done into youth unemployment and the correlation with people retiring later?
411. **Mr Graham:** The last time we were before the Committee, we presented and forwarded on the quarterly economic review, which focused on youth unemployment in Northern Ireland. I made the point earlier that if you are keeping people in jobs for two, three, four, five or eight years longer, those job opportunities are closed off for that time.
412. One thing that we could ask of all the Departments and the NDPBs is this: what is the churn rate in respect of their employment, and what are the implications of people staying longer in jobs vis-à-vis the recruitment process? Anecdotally, we can say quite clearly that recruitment has slowed up across all our public services as a consequence of the imposition of the austerity measures. So, there are fewer jobs becoming available, and that has direct consequences for the labour market, and, particularly, for youth unemployment.
413. **Mr McQuillan:** Where do you suggest that the Executive find the cost for holding this up? Where do we take the money from?
414. **Mr Graham:** We first have to assess that cost. I think that Grace said that the £262 million could be 50% out. If it is that far out, it will, hopefully, come down considerably. However, it is a question of what price you put on the Assembly and Executive meeting their proper responsibilities in dealing with primary legislation for this part of the world, as opposed to being told, "If you don't do it, we are going to hit you with a penalty".
415. I think that the Treasury has to be told that what might have been its timeline for England and Wales, which was not the timeline that Scotland wanted but will probably be forced upon it as well, is not ours. This goes to the heart of asking what the point is of having a devolved Administration. Are the devolved Administration merely nodding ducks for London or are they serving the people of Northern Ireland?
416. **Mr John O'Farrell (Irish Congress of Trade Unions):** I will add a small point, Mr McQuillan. I am sure that this Committee, more than any other at Stormont, is fully aware that estimates of cost can vary widely and quickly, not least, for example, those on the varying rates of the potential cost of devolving corporation tax. In two months, those estimates went from around £200 million to £700 million. These things are variable.
417. From the word go, we have argued consistently that it is worth making an investment to make sure that the figures are right before we leap into something as substantial as this, which will have an impact on the labour market here for at least 50 years. You do not get a chance to do this every couple of years; it will have a major impact.
418. On the broad issue of information, I take this opportunity to clarify an error that I made in my most recent evidence to the Committee, which Mrs Nesbitt was kind enough to correct when she followed us in that session. If I recall correctly, I stated that the Executive took a decision in March last year to go ahead with this, based on a very limited — a one pager essentially — briefing document from DFP officials. Mrs Nesbitt clarified that the estimate was given to the Executive in November, and not March as I stated, for which I apologise. What she did reveal was:
- "The decision taken by the Executive on 8 March last year was not actually a result of the three strikes."*
419. That was a reference to Minister Wilson's insistence that this be discussed. She continued:
- "Also, at that stage, and I think that it is apparent from the information" —*
- blah, blah, blah — and then, basically, about the GAD she said:

- “the Executive, at that date in March, did not have any figures”.*
420. So, the ball got rolling at the Executive in March last year with no figures whatsoever. It was clarified when the Bill was introduced in the Assembly by the Minister, when he did have this figure, and the point about the £262 million is that we would like to have it seriously questioned. We believe that doing that and looking at the broader implications of the Bill is the role of a scrutiny Committee such as this.
421. **Mr McQuillan:** I have a great sympathy for the people who will be affected by the Bill going through, but the unions, and basically Bumper, with his pompous attitude towards the Committee and the Department, do their members a great deal of harm. I would just not like to be dealing with him on behalf of the Department. It has a hard job dealing with the unions.
422. **The Deputy Chairperson:** Well, that is your personal view —
423. **Mr McQuillan:** Yes, it certainly is.
424. **The Deputy Chairperson:** — and I could not possibly comment on that. *[Laughter.]*
425. **Mr McQuillan:** That is all right.
426. **The Deputy Chairperson:** I move on to Mitchel McLaughlin.
427. **Mr Mitchel McLaughlin:** On the broad macroeconomic reality, there is probably quite a lot of common ground between the parties in the Assembly and the workers and members that you represent. We are Members of a devolved Assembly that does not have fiscal controls, so we have limited ability to put our handprints on policies to make them just and equitable for everyone.
428. That is a given. There is not even agreement between us about what kind of fiscal powers we should go for. My party has a very firm view that we will not rebalance or rebuild the economy or deal with the inequities that already exist unless we have the tools in the toolbox. However, that has to be agreed by the parties. As we have seen with the corporation tax debacle, we also have to get the Treasury and the British Government to agree to hand over those powers. That is a given in this scenario, and it is the reason why I use it as a preamble.
429. Bumper, I thought, dealt head on with the attitude of the trade union movement to the reforms coming down the line. If they can be slowed up, fair enough. I would not expect you to say anything other than that. You gave a fairly forthright answer to Dominic's question about the new regime, or the replacement to the final salary scheme. The Executive cannot afford to disregard the implications of not adopting the scheme that Westminster will impose. Not doing so will bring a price tag. In those circumstances, the choice for the Assembly would be between which essential services should be sacrificed.
430. Your response gives me some encouragement that we could have a joint approach. If the trade union side formally works out its attitude to pension scheme reform and engages on that basis, I think that this scrutiny Committee would find it possible to lend its weight to a joint enterprise to work out the macroeconomic implications. The scheme has to be financed in some way. I am a trade unionist by background. Inequities have developed over the years. I am very good at dancing on the head of a pin at times, but I do not think that we can do that forever. There are issues that have to be addressed.
431. In my view, the Department is dancing on the head of a pin on this one. There is not an adequate information background to inform this decision. It is not good enough to say that we are being driven in this direction by others. If there is any logic to the devolved arrangements, it is that we say, “Let us take a look at this. Let us make decisions insofar as we can.”
432. We will not resolve the fiscal issue. There has to be a reality check for all of



us in respect of what can be done. We can argue the bit out, and it will happen anyway; or we can say, “We are going to sit down on the basis of our attitude to what you want to achieve. Let us work out the macro social and economic implications and come up with the most equitable solution.” I think that you would bring the Assembly with you if that approach could be formalised in some way.

433. **Mr O’Farrell:** I will say something quickly on that, Mitchel, which will also address the point that Mr McQuillan made earlier. The Department is not proposing that £262 million be taken out of the block grant and that, therefore, the hit will be taken by the entire Executive. It has become quite clear from the “negotiations” as we call them and “consultations” as they call them, that we have held with the Department, that it will propose devolving the cost to each Department. Therefore, if changes are not made within the prescribed timetable, the Department of Health will take a hit on its scheme, but not the overall Executive. By the estimate of GAD, this will mean £100 million a year being taken out of the health budget. The estimate for education, which is extrapolated from the modelling based on the health scheme, is around £60 million. There will be a substantial hit for the Department of the Environment, which does not have a particularly big budget, especially when compared with Health or Education.
434. You can see what is going on here. The responsibility is essentially being shovelled down and down and down. It is going down from the Chancellor of the Exchequer to the Treasury, to the devolved Administration at Stormont, and to the Department. It keeps going down and down and down. Where does the responsibility stop? Who is going to pick up the tab in a real and meaningful way, not just fiscally but politically?
435. There is a curious and worrying level of unwillingness to take responsibility for this. It will also be intimidating for each individual Department, Minister and scrutiny Committee. When it comes to negotiating the secondary legislation

and the regulations, it will be made clear to Departments from a very early stage what it will mean for them. So, you can see that this Committee has a particularly important role to play, which is to try to extrapolate for the benefit of the whole Assembly and the whole Executive the bigger picture of what is going on.

436. **Mr Mitchel McLaughlin:** I am trying to make a point. I can make it only as an individual member; I am not speaking for the Committee. If you have a decision to make, a decision will be made. That decision could be to defend front line services as opposed to the current pension arrangements. I know that I, as a socialist, will vote to save the services. You have to take that into account. You have to find some way of having a meaningful negotiation and process.
437. **Mr Graham:** In response to that — and, to some degree, in response to Mr McQuillan — I will say that the job of trade union officials is not just to protect and promote the existing terms and conditions of our members but to enhance their terms and conditions. I would not like to be a trade union official who goes in and says openly, “My job is to do the workers down.” In 2005-07, on the last set of reforms, the bulk of the unions, by and large, reluctantly accepted that you had to deal with costs going forward and agreed to enter into discussions on the cap issue on a scheme-by-scheme basis. We did not get a chance to engage in those negotiations, because Hutton came along and the rug was pulled out from under us. I make no qualms about saying, “If I can stop this; brilliant. If I can delay it; good.” That is my job. That is the job that I will prosecute to the nth degree on behalf of my members. If that makes life difficult for politicians —
438. **The Deputy Chairperson:** May I interrupt there? When I asked you the question about slowing the process down, that was not just in relation to mitigating or delaying the effects on your members. What I had in mind is that a longer period may give us the opportunity to

- shape a scheme that is better for the place in which we live.
439. **Mr Graham:** I was going to come to that in the second part of my answer, Dominic. I make no apologies for doing what I am charged to do. Going back to 2005-07; that was a difficult pill to swallow, but we were prepared to swallow it. I think that there is still scope to do that.
440. The reason why we are suggesting that we take a much wider review and assessment is because of the serious question marks about the £262 million and, and more importantly, that other costs have not been factored in. If we can prove to the Treasury that the cost of keeping x hundred or x thousand people on the dole queue for two, three or four years longer is y, then y could be a saving from the social security budget. Public servants would retire at the ages that they previously held jobs, live off their pensions, and not be claiming other social security benefits, because they would probably not be entitled to claim them. It is about trying to deal with the totality of costs. If there is a big fault line in what Hutton did and what has happened subsequently, it is that they looked at only one side of the coin, namely the cost of paying for public service pensions. They did not flip the coin and look in detail at all the other costs.
441. **Mr D McIlveen:** I love the world in which the trade unions aspire to live. I want that world. I genuinely do. The problem is that we are not in it, and I think that we are a long way from it. Some comments have been made this morning that have been thrown out there to provoke conversation and debate, but some irresponsible terminologies have been used. I do not think that to delay something is good if we are delaying something that is inevitable. The term was used earlier that the Treasury is the puppet master. Unfortunately, as well as possibly being the puppet master, it is, more relevantly, the paymaster. It is the paymaster to the tune of £11 billion a year above and beyond what we are bringing in. As we all know, that is largely down to a public sector that is already fairly overinflated. I am not for one minute suggesting that there should be a radical cut or cull in the public sector, but we have to accept the facts as they are.
442. John, I have found in your evidence and in previous evidence sessions that your points are made very articulately, and I quite enjoy listening to them. You asked who picks up the tab, and the Department has kind of told you who picks up the tab. You were able to tell us, effectively, who picks up the tab. I have to ask that question to you, and I am yet to receive an answer. We have heard a list of problems and concerns this morning, and it is good for us to hear those. We need to hear those. Unfortunately, we have heard very little in the way of solutions. The bottom line is that if we are delaying the inevitable, we are delaying the inevitable at a financial penalty, which is not good for the economy of Northern Ireland as a whole. It puts us in a very difficult position where we then have to find somewhere to make those cuts accordingly. I accept that it is not a good position to be in, but I just do not see how, with any degree of credibility, we can tell the Treasury that it will play by our rules when we are so financially dependent on it.
443. Someone asked: what is the point of devolution? The point of devolution is for us to make decisions and divide the block grant as fairly and responsibly as we possibly can for the benefit of everyone in Northern Ireland, in the private sector and the public sector.
444. Corporation tax has been spoken about this morning. Obviously, we are still fighting for that, but it is widely accepted that it will become a reality only if it can be argued that it is cost-neutral to the Treasury. The Treasury will not subsidise the private sector. It will allow this to happen only if it is not at a cost to it. Therefore, we have to ensure that we are arguing on that basis as well.
445. I do not want it to appear that this side of the table is completely against the

unions and the public sector and very much in favour of the private sector over the public sector. That is not the case, because we are not arguing for something in the private sector that we would not also argue for the public sector. It should be fair, but I am yet to hear this morning or in any of the evidence sessions previous to this one where we pick up the tab. Once the penalties are imposed on us, we can blame the bankers and the private sector — we can blame everyone, including the cows in the field, for what has happened — but the bottom line is that it is there and we have to deal with it. So, I am looking for solutions. I have not heard them, unfortunately. If we can hear them, we can obviously take that back.

446. I am not sure what the motivation was behind what Bumper said, but it would be incredibly irresponsible to delay something that will impact on us with a huge financial penalty in the knowledge that it will bring us to where we are today anyway. I think that that would be morally redundant and incredibly irresponsible. If we can find solutions, let us hear them.
447. **Mr O'Farrell:** I agree with you, Mr McIlveen, that morality is an excellent place to start in politics. It is very important. We are presented with a bean-counting attitude in this. Mrs Nesbitt and Bumper both referred earlier to a document by the Institute of Economic Affairs, which is well worth a read. Essentially, it argues that it is a very good thing that people are forced to work longer and it cites some obscure statistical research that shows that people who retire get ill at some stage. So the argument is basically that if you can get people to work longer, they will not get ill later in life. It is like making the case for welfare reform along these lines: "Obesity is a public health problem that particularly affects poor people so, if we cut their benefits and wages, they may slim down a bit." That is an utterly weird way of looking at the world. The difficulty is that we tend to forget that this stuff is not just about

bean counting; it is deeply ideological and there is a huge amount of spin going on.

448. Mrs Nesbitt referred earlier to a document produced by the Pensions Policy Institute. I saw how that was reported in the popular press. Unfortunately, I have to read the 'Daily Mail' every day. It was reported that that highly respected think tank — experts on pensions — stated that public sector pensions were worth way more than private sector pensions, so public sector workers deserve everything that is coming their way. I thought that that was a bit odd, so I rang up the author of the report in London. I can tell you that he was spitting tacks about the way the report was being covered. The report stated that the Hutton reforms on public sector pensions were cutting the value of pensions for public sector workers by one third, which is way more than the spin that was about two or three years previously. It was a serious report, written by serious researchers. The journalists had pulled one line from the report that said that public sector pensions were still better than private sector pensions, which are, unfortunately, even worse. The attitude was, "Well, that is all right then."
449. You can see what we are getting at. I am sorry to say that the issue is to do with ideology. That is the way the whole issue is being pushed. The generation of my parents and yours agreed that it was a good thing that people did not have to work until they dropped. There was an attitude that was a part of the great post-war consensus that people had a right to retire and enjoy their retirement, rather than be forced to work until they are 68. These proposals are seriously suggesting that, when your house is on fire, a 59-year-old firefighter should be shimmying up a ladder to rescue your family. They are suggesting that police officers up to the age of 60 should deal with God knows what in the streets, and that prison officers aged 66, 67 and 68 should deal with the consequences of what those police officers have to deal with. There is a broad ideological

- argument here that is well worth having, and it is to do with quality of life and how we respect older people and public sector workers. This whole debate has been essentially poisoned by people who could, at best, be described as bean counters and, at worst, as rather mean-spirited. That is a debate worth having.
450. **Mr D McIlveen:** Let us try to take it out of ideology and back to the facts that you have presented this morning. Let us argue that it is a good thing for someone to retire at the age that is set at the minute. People will inevitably get sick at some point in their retirement. I agree with you: I am sure that, whether you are retired or not, people will still get sick. How can it be argued that a £100 million reduction in the health budget is a good thing for those people?
451. **Mr Graham:** I will pick up a couple of points on that. If you follow some of the commentary that is in the research, you will see that, in essence, it is saying that people in retirement get sick, but the question is when they get sick. It is always going to be the case that, the older you are, the greater your propensity for ill health. We are saying that if that person is in a pension scheme, the most costly element of that scheme would be paying ill health early retirement benefits. Again, it is about having to look at the total costs and where those fall.
452. Likewise, as John and I have said, it is estimated that the totality of the impact of the pension reforms is to reduce the value of public service pensions by one third. Pluck a figure out of the sky. Say that £1 billion in Northern Ireland is spent on public service pensions. If that reduces to £666 million, where does the other £334 million go? It does not go into the Northern Ireland economy. It does not have the multiplier effect that money spent in the local economy has. That is the point we are trying to make about why there is a need for a full, comprehensive macroeconomic assessment. As I have said, to date, only one side of the equation has been addressed. The other side of the equation has not been looked at.
453. **Mr D McIlveen:** I completely accept that we are dealing with “what ifs”, and that is why I would rather try to stick with the facts. The bottom line is that, whether we like it or not, if we do not meet the deadlines that are upon us, as things stand, we will be financially penalised.
454. **Mr O’Farrell:** With respect, Mr McIlveen, that is not a fact; that is a demand. What you are getting from the Treasury is a demand; you are not getting the full facts of the issue. We are saying that we should look at the full facts. There are serious questions to ask. If there is a cost, as Bumper referred to, where is that going to come from? You mentioned £100 million from the health budget. That money is devolved. However, other forms of government spending are not devolved. They come directly from Westminster, and it works both ways. The cost of the benefits system largely comes from the Treasury; it does not come from the Northern Ireland Assembly.
455. **Mr Girvan:** It might.
456. **Mr O’Farrell:** It might at some stage, but, at present, it does not. However, you cannot really calculate the impact of what we are talking about without bringing in the potential cost to the social welfare benefit system. Likewise, there is the issue of revenue raising. Lots of taxes are collected in Northern Ireland. One of the problems, as Mitchel pointed out — you may or may not agree with where he wants to take this, but you cannot deny the facts — is that the vast majority of taxes collected in Northern Ireland do not go anywhere near this Administration. They go straight to Her Majesty’s Treasury in the form of VAT, income tax, etc. So there is a broader issue regarding the overall cost.
457. Although we disagree with the idea of cutting corporation tax, it is a good example to raise, because it was a revealing way of looking at the mindset that you are dealing with at

- HM Treasury. It would not take into account any increased tax revenues if there were greater employment as a result of cutting corporation tax. We disagree with that policy. However, the proponents of it said that you would have more people working and more people spending in shops. That means more income tax and more VAT going to Her Majesty's Treasury. The Treasury would not take that into consideration. It would just keep adding the cost of a cut in corporation tax, what it would not be collecting, and so forth. It is a stacked deck, and we need a deck that, at least in respect of the information we have, allows us to see the bigger picture and the facts of the situation, rather than a series of assertions from HM Treasury. My argument to all members of the Committee is that our job is to protect our members. Your job is to protect the taxpayers of Northern Ireland, who are being offered a bum deal by the Treasury. This Committee has a role in exposing that.
458. **Mr D McIlveen:** I always like to try to keep things simple and to deal with the facts as we have them. This is a devolved Assembly, and it is devolved from the UK Treasury when it comes to the financial side of things. I have said this once, and I will say it again: the Treasury is subsidising Northern Ireland to the sum of £11 billion a year. We do exceptionally well out of it, compared with where we would be if we were standing alone or in another jurisdiction.
459. **Mr Graham:** That must be a reference to Scotland. *[Laughter.]*
460. **Mr Mitchel McLaughlin:** Excuse me while I bite my nails. *[Laughter.]*
461. **Mr D McIlveen:** I asked how it benefits your members and the people we represent if budgets from other Departments are sliced. This is going to happen; I am absolutely sure of that. I cannot see a way in which it will not happen. We are trying to saw sawdust. It simply does not work. I asked how it benefits your members if £100 million is taken out of the health budget. I still have not received an answer.
462. **Mr Graham:** David, I accept the point that you make. In a variety of Committees that we appear in front of, we are asked, "If we do x, what is that going to do to y?" Those are hard decisions. We are saying two things. First, we do not believe that the information about the costs, and so on, is valid. We want to test that. In doing so, let us test it on the widest possible basis, including potential health costs of people working longer and social security costs of blocking employment opportunities. Remember what I said: we reached agreement with government and the employers five or six years ago on revised schemes that looked at things such as cap and collar, and some increased contributions from our members. That was not allowed to progress. We are prepared, in the context of Northern Ireland, to go back and enter into those negotiations in the hope that it produces a better deal for our members, which has to be our primary focus, and that it represents a better solution for Northern Ireland, rather than just taking what is being forced through from London.
463. **Mr Harry Baird (FDA):** For clarification on what David was saying, and picking up on what Mitchel has said, you have probably made the best case yet for a full macroeconomic assessment. At the start, you asked who pays, and you said the Treasury. From our point of view, the only people paying at the minute are our members. On the macroeconomic point, we have bandied figures about. It may well be, to the surprise to everybody, that there is a real saving. We all know that the £260 million figure is, essentially, rubbish. We do not know what the real figure is. You have quoted £100 million from the £260 million. In fact, we have no idea what the figure is. We certainly know that, at the minute, the only people who are paying are our members. We started to pay two years ago. The macroeconomic issue is absolutely critical. With respect, nobody can answer your question until that is clear.

464. **Mr O'Farrell:** In the last part of her evidence this morning, Mrs Nesbitt made it clear that the point of the whole exercise is to save money. Let us say that the figure is correct, and that you are going to have x amount taken out, Department by Department. Either way, it is going to happen: if it is not taken out of those Departments, it is still the same ballpark figure that is not going to end up in the private sector through discretionary spending, supporting local shops, and so on. The single most important economic fact about pensioners is this: they spend their money. They do not save it; they do not squirrel it away. That is always the best argument to make for increasing the pay of low-paid workers.
465. If I may finish with a short anecdote, a couple of years ago, I had the pleasure of having a little chat with a representative of the Bank of England, who I am sure you have all met at the Committee. At that time, I was involved with a trade union campaign on the state pension, which we were hoping would be increased to the level that it was at before Thatcher cut the link to earnings back in 1980. It had been calculated that if the link to earnings rather than to inflation had been kept, the state pension at that time would have been £180 a week instead of £95 a week.
466. I asked the representative of the Bank of England how quantitative easing worked. I said that it could be a very good way to pump more money into the economy without necessarily giving it to banks first so that they could take a massive cut. I said, "This is what you should do: double the state pension overnight." If you give it to pensioners, they will go out and put money into local shops and local pockets. They will spend it in the economy. Naturally, she looked at me as though I were completely mad. She said that the only way in which quantitative easing could work would be to give vast amounts to banks. Of course, as we all know, that has been a wonderful success. It has trickled down wonderfully.
467. The point is that, whether the figure of £262 million is right or wrong, it will come out of the economy either way. We are saying, first of all, let us study the figures and the facts to work out what the full economic costs and benefits are of proceeding. Let us deal with the facts as they actually are, not as some bean counter or wonk in the Treasury wants us to believe them to be.
468. **Mr Jim Quinn (Fire Brigades Union):** May I make a point?
469. **The Deputy Chairperson:** It would need to be very brief because members are waiting to ask questions.
470. **Mr Quinn:** A couple of very important points were raised. A question was asked earlier, and nobody has really answered or commented on it. It was about equality impact assessments and where they should sit in the whole process. The view of the Fire Brigades Union and, I am sure, that of my colleagues, is that it should be at primary legislation stage because, put very simply, if you leave it until secondary legislation or the setting up of the schemes themselves, it will be too late. For example, in our scheme, the age of 60 is part of the primary legislation. If you go to the EQIA after that — we know that that will impact adversely on females — all that you will be able to do is mitigate it by actuarially reducing pensions. In other words, female firefighters who join a pension scheme will never realise the full scheme. All that they will realise is a reduced pension. In our view, that is inherently unfair.
471. That needs to be dealt with at the primary legislation stage. That could be done around this table. It is not all about macroeconomics and Westminster. That is something that we could do locally. It should be done immediately, and cognisance should be taken of it. They have fudged the issue and put it on the back-burner. It will never see the light of day. For female firefighters in particular in Northern Ireland, the normal pension age of 60 will not be achievable. We urge you to consider that when you look

- at the process of how you actually get round to carrying out an EQIA.
472. **The Deputy Chairperson:** OK. Thank you very much. Leslie, I know that some members have to leave. Perhaps we could move along a bit more quickly.
473. **Mr Cree:** You have certainly been very generous, Chair, in allowing this social debate. I do not know whether we got much evidence from it. However, it has been stimulating. I will resist the temptation to get involved in that, apart from to tell Harry that the taxpayer pays into those funds as well. That is a very important point.
474. To be objective, we are talking about a change in a final salary pension scheme. The private sector cannot afford those schemes any more. That is the reality. Why should the public sector be able to do it? The second point, which is really the one on which I would like to see whether there is some accommodation, is this: if we eventually have to accept the fact that final salary schemes are gone, do we accept something like a career average or money purchase scheme, or whatever? Why do the unions not help us by coming out with a clear answer?
475. **Mr Graham:** On the issue of public versus private, the TUC issued a report last week on the state of pensions generally in the UK. They are at a lamentable point. Rather than improving, they are getting worse. Hutton said that he did not want his reforms to be a race to the bottom. There is an issue in that private sector employers have been fleeing away from final salary and other decent pension schemes. There is a much wider debate to be had about how we provide for decency in retirement for every worker. Lord Turner was mentioned in the DFP composite response. His report sets out levels of what he believed should be income thresholds based on a percentage of earnings. I think that that is a fair way to address decency in retirement for all workers. The Turner report should be looked at in that regard.
476. Looking forward, the trade unions did and do recognise that there are issues. We have sought to address the issues with regard to the most recent set of reforms. We are willing to continue with the negotiations that we said we would fully enter into. We did not close the door on those negotiations. In respect of those reforms, the door was slammed in our faces by the Government. They closed the door, not us.
477. **Mr Cree:** Why is there divided opinion from the unions on the type of pensions that we should have?
478. **Mr Graham:** Different unions represent different cadres of membership. As I hope I explained earlier, we are talking about an enabling Bill that sets certain parameters. The negotiations on each scheme then deal with the detail. That includes things like the accrual rate. There is a big difference if your accrual rate is one forty-ninth as opposed to one fifty-sixth. Equally, there is a big difference if your contribution rate is x% of your salary vis-à-vis y% of your salary. Therefore, even within one scheme, it is very difficult to say what the changes mean. It is much more complex to do an across-the-board analysis that compares one scheme with another because the variables in each of the schemes are so diverse. That is why there are different views.
479. One issue on which there is unanimity is the age of retirement. There is absolute unanimity on that. Other issues on which there is unanimity include looking forward to what the governance and negotiation arrangements should be in the schemes, etc. There are one or two issues, such as CARE, on which there are different views. However, I think that that is only natural, given the diversity of the schemes.
480. **The Deputy Chairperson:** OK. Thanks very much to all of you. No doubt, we will meet again.





## 22 May 2013

### Members present for all or part of the proceedings:

Mr Dominic Bradley (Deputy Chairperson)  
 Mr Leslie Cree  
 Ms Megan Fearon  
 Mr Paul Girvan  
 Mr John McCallister  
 Mr David McIlveen  
 Mr Mitchel McLaughlin  
 Mr Adrian McQuillan  
 Mr Peter Weir

### Witnesses:

Ms Margaret Coyle  
 Mrs Grace Nesbitt  
 Mrs Blathnaid Smyth

*Department of Finance  
 and Personnel*

481. **The Deputy Chairperson:** I welcome Mrs Grace Nesbitt, head of pensions division; Mrs Blathnaid Smyth, head of pensions division and corporate human resources; and Ms Margaret Coyle from pensions division and corporate human resources in the Department of Finance and Personnel (DFP). I will ask Grace to make an opening statement.
482. **Mrs Grace Nesbitt (Department of Finance and Personnel):** I welcome the opportunity to meet the Committee again regarding the Public Service Pensions Bill. On 24 April, I briefed the Committee on the initial outcomes of the responses to the consultation on the proposed Bill. Further information on a number of areas was provided to the Committee on 9 May. The Chair of the Committee wrote to Minister Wilson looking for more information, and that has been provided as well.
483. At this stage, I would like to comment on the outcome of the consultation and the Department's intention to proceed. I remind members that, including late receipts, there was a total of 52 responses, which were from individuals, organisations and trade unions. Members have the full response to the consultation document and the covering

paper. With your permission, I will briefly outline the six main areas of concern and some points on other matters that have been raised by the Committee subsequent to our previous meeting.

484. The first area of concern is the overall need for the reform of public service pension schemes. Reform is required, and agreement was reached with unions in 2005 on measures such as "cap and collar", but that did not really address the fundamental issues or the underlying structural reform that was required, nor did those earlier reforms significantly reduce the cost to the taxpayer.
485. The previous reforms helped to strike a better balance between employees and taxpayers in the distribution of pension costs but did not go far enough in addressing the underlying pressures and costs of providing public service pensions. Put simply, the earlier reforms did not go far enough, and they focused very much on new members or new joiners to the scheme, and not on existing members.
486. For example, changes were made in two key areas: the age of retirement for new members to the scheme was changed and measures such as the career average for new members were introduced, but they did not address the terms that were enjoyed by existing members, such as final salary.
487. The scheme cost cap mechanism which the Bill will introduce will maintain costs between floor and ceiling limits in a way that takes account of factors such as changing trends in longevity and improved sustainability. The cost cap floor will also provide for improved benefits for members if pension costs are reduced, whereas the "cap and share" mechanism addressed only increasing expenditure.
488. The second area I want to touch on is the whole issue of managing pension

- costs and actuarial analysis. The Department has always made clear that the estimate quoted in excess of £260 million was intended to give an illustration of the scale of the financial penalty that would be imposed as a consequence of delay or failure to introduce the reforms.
489. Members will be interested to know that the Department has now commissioned the Government Actuary's Department (GAD) to provide scheme-specific calculations for the four other unfunded pension schemes — teachers, police, firefighters and civil servants. The cost of that further work by GAD is likely to be in the region of £20,000 to £30,000. That information should be available and will be provided to the Committee in early June. It should be noted, however, that those estimated costs are based on schemes agreeing to adopt scheme designs that are equivalent to the GB ones. If schemes here choose a different scheme design, the fee for doing more detailed work could exceed £100,000.
490. In a previous session, the Northern Ireland Committee — Irish Congress of Trade Unions commented on the wider macroeconomic impact of increasing the normal retirement age, with the resultant reduction in labour opportunities for the unemployed, school and university leavers, and those seeking to return to the labour market not having been researched.
491. The Northern Ireland Executive are aware of the financial impacts for departmental budgets and public services if their agreed policy for pension reform is not implemented. Spending more on public service pensions will affect and result in a diversion of available funding from other areas. The Nevin Economic Research Institute has completed research on youth unemployment, which is a matter that the unions brought to members' attention at the last session. It quotes the cost of 16- to 18-year-olds not in education, employment or training (NEET) in the Northern Ireland economy as being in the region of £300 million.
- That should not be interpreted as a potential cost of pension reform. That figure is based on research into the total economic cost of all NEETs in the labour market, not just those who might be impacted in some way by any initial reduction in job vacancies as a consequence of the implementation of the pension reform.
492. Furthermore, nearly three quarters approximately £235 million of that estimate, is attributed to a loss of potential earnings. It is important to note, therefore, that although pension reform may impact on the age profile of those in work, it will not reduce employment levels. So, those earnings and the economic activity associated with them will not be lost. The remaining quarter of the £300 million estimate, which is approximately £65 million, relates to the cost of the benefits paid to those people. Setting aside any differences in the rates paid, any increases in the cost of youth unemployment benefits will be offset to some extent by a reduction in expenditure on pensions.
493. Thirdly, the core provisions and the impact on public servants. The Department has reached the conclusion that the core provisions remain valid and necessary and will ensure a further distribution of costs between the employee and the taxpayer. More detail on that is set out in the response to the consultation.
494. Fourthly, moving to look at the move to career average revalued earnings (CARE) as opposed to a final salary scheme. The departmental response document sets out the varying options that the Independent Public Service Pensions Commission considered and its recommendation that the CARE option provides the best balance weighted against the commission's stated principles and the distribution of risks between member and taxpayer. I do not intend to go into any more detail on that in this session, but I would like to make an important point that the rationale for the move from final salary to the CARE model has been endorsed

- by the Institute for Fiscal Studies as a sensible way of achieving the aim of increasing fairness between high-, mid- and low-flyers. The scheme is less generous than a final salary scheme to high-flyers, who would have seen their salaries increase by more than average earnings, but, in turn, it is more generous than a final salary scheme to those whose salary grows by less than average earnings.
495. The fifth point is the linking of normal retirement age to state pension age. The Public Service Pensions Bill is intended to implement a framework of core principles common to all schemes, within which sponsor Departments will have scope to adjust scheme designs to suit the needs of particular workforces. So, although the retirement age will remain the same with the link to state pension age, schemes will have scope to vary what members will get if they wish to retire earlier. Those options and such flexibilities will be addressed in the consultations on the secondary legislation for each scheme.
496. The last main point is the screening out of a full equality impact assessment. Equality screening indicated a number of actions — for example, on age — concerning those impacted by these reforms, and transitional protection arrangements will mitigate the impact on older people. As I said, the policy of a career average provides for a fairer distribution of benefit between low and high earners. In some schemes, lower earners are more likely to be female.
497. I will briefly outline the next steps. The response to the consultation has now been made available and circulated. The intention is to proceed with drafting the Bill to ensure that it completes its First and Second Stages in the Assembly and moves to Committee Stage before the Assembly's summer recess. That is critical to ensure that the Bill's progress remains on track to avoid any impact on the Northern Ireland block.
498. Finally, the Committee may wish to review a number of recent publications, and there has been some coverage in the press recently. If members are interested, I can send electronic links to the documents, as they are quite lengthy. This is just a couple of them, but there are more. There is one called, 'Work Longer, Live Healthier' by the Institute of Economic Affairs. It addresses the relationship between economic activity, health and government policy. Its headline conclusion is that being retired decreases physical, mental and self-assessed health and that the adverse effects increase as the number of years spent in retirement increases.
499. The second document that I would refer the Committee to is the Pensions Policy Institute's paper entitled, 'The implications of the Coalition Government's public service pension reforms'. Its headline finding was that the reforms will reduce the average value of benefits offered across all schemes by more than a third. That is based on all the reforms that have happened, not just those that will be part of this Bill. The analysis includes, for example, increased contributions, which is already in hand; the change from the retail price index to the consumer price index; and the reforms set out in the Public Service Pensions Bill. That report also concludes that public service pensions are still more attractive and beneficial to members than those available in the private sector.
500. I am happy to take any questions.
501. **The Deputy Chairperson:** OK. So you are saying then that it is healthier to work until you die?
502. **Mrs G Nesbitt:** It does not quite conclude that or go that far, but I suppose you could take it to the extreme. I have read the report — it is quite an interesting read — and, as other reports have, it concludes that, in a nutshell, work is good for you, that retiring has an impact on your physical and mental well-being, and that those impacts get worse the longer you are retired. So, it does not quite conclude that you should work until you die,

- but I suppose that you could add that strapline.
503. **The Deputy Chairperson:** OK. What level of consultation and agreement will be sought from the trade unions on the directions in respect of scheme valuations?
504. **Mrs G Nesbitt:** Sorry, can you just clarify which scheme valuations you are talking about? Are you talking about the scheme valuations going forward for the baseline or those that have been suspended?
505. **The Deputy Chairperson:** The scheme valuations carried out by the Government Actuary's Department.
506. **Mrs G Nesbitt:** Right, OK. There are different valuations.
507. **Mrs Blathnaid Smyth (Department of Finance and Personnel):** The Bill will state that the scheme valuations will be set by DFP — the Westminster Bill states that the Treasury will do that. It actually specified in the Bill that they should be set in consultation with GAD and staff representatives. It is obviously early days because this is a new piece of work for us, but there will be scope for consultation with trade unions on that.
508. **The Deputy Chairperson:** You mentioned that a number of schemes — those for police, firefighters, teachers and civil servants — had been added in for evaluation. Is that right?
509. **Mrs G Nesbitt:** Sorry; I maybe have not made that clear. That is not for a valuation per se. The estimate of £262 million that we provided earlier focused very much on the health and social care scheme. The Government Actuary's Department letter referred to the fact that it could do work on other schemes. The Committee asked us to look into that, and we had written about it. I was then providing an update that we have now commissioned GAD to do further work looking at those other schemes and to provide more detail, rather than simply applying the 7% figure for the pensionable pay bill, which was the outcome of the work that GAD did on health. So, it is not a valuation as such of what GAD would do; it is GAD looking at that to provide an estimate for the cost of delay. That will be undertaken for the four other schemes. That is the information I hope to provide to the Committee early in June.
510. **The Deputy Chairperson:** What other schemes are you talking about?
511. **Mrs G Nesbitt:** The four other schemes that I named: teachers, the police, firefighters and the Civil Service.
512. **The Deputy Chairperson:** OK. Why is the stated cost of this exercise, at £20,000 to £30,000, less than previously suggested?
513. **Mrs G Nesbitt:** As I attempted to explain, if we were to do a really detailed costing exercise, GAD would need to have information on the exact nature of the other schemes and on how closely they will be aligned to their equivalent schemes in Great Britain. That would be a very detailed and significant piece of work, which GAD has estimated would cost around £100,000. The basis of this work being undertaken is that the other schemes here follow and do exactly the same as their counterparts in GB. So, it is predicated on that assumption. Hence, taking that assumption into account, it will be a much cheaper well, relatively cheaper; it is still £20,000 to £30,000 piece of work than the previous amount quoted.
514. **The Deputy Chairperson:** Recognising that there will be a cost associated with a full macroeconomic analysis of the implications of the proposals, why has a full costing and business case not been established, especially given the significance of our local circumstances?
515. **Mrs G Nesbitt:** Again, that was set out in detail in the response from Minister Wilson to the Chair of the Committee. Without rehearsing that, the view that has been taken is that the need for the reform and the financial consequences of not doing it were researched and set out in the report by Lord Hutton. That has been accepted as the direction of the way forward.

- Lord Hutton visited Northern Ireland and took evidence when he was putting forward his proposals on the need for reform, and he did refer in his report to macroeconomic issues. So, the view is that that provides a sound evidence base for moving forward.
516. **The Deputy Chairperson:** In paragraph 4.102 of the consultation response, the Department stated:
- “Consideration of the scheme-specific equality impacts is being undertaken separately by the relevant Departments with responsibility for implementing the agreed policy in secondary legislation”.*
517. Will the results of those impact assessments be available before the Bill is introduced, given that the core provisions of all schemes will be determined by the Bill?
518. **Mrs G Nesbitt:** No, they will not be. The equality screening and whether an impact assessment is required will be looked at when Departments are developing their proposals for their secondary legislation. Certainly, we are trying to work in tandem as much as we can with the secondary legislation, but I do not think that will actually be available, because Departments will have needed to have finalised exactly what they are going to put in their secondary legislation for that to be done, which will take some time.
519. **The Deputy Chairperson:** On the core provisions of the Bill, what will the starting point be for calculating the career average revalued earnings? Will it be based on the person’s salary on the date of the new scheme commencing or on their original salary on joining the public service?
520. **Ms Margaret Coyle (Department of Finance and Personnel):** It depends on whether people are within the 10 years, the transitional period, etc. There are different variations for people coming into the new scheme and what is applicable from 1 April 2015. Obviously, the accrual rate will start from 1 April 2015, and a snapshot of their salary will be taken at that moment, and then the accrual rate will be applied on a year-by-year basis. There will be people who have final salary and who have been in the previous scheme; they can carry that through into the new scheme. People who are within 10 years of retiring on 1 April 2012 will obviously stay in the final salary scheme and will not have to move into the new CARE scheme at all.
521. **Mrs G Nesbitt:** I appreciate that this is a lot of information for members to take in. We could set out some examples by way of information if that would be helpful. Sometimes if you just see something drawn out by way of an example — if that would be helpful and if the Committee is agreeable, we could maybe set out some examples of that.
522. **The Deputy Chairperson:** Yes, we would welcome that. To what extent do you propose to replicate the amendments in the Westminster Bill? For example, will similar provision be made in the Bill here as exists in the House of Lords amendment requiring a report on the likely effects on the health of firefighters and police officers of the increased pension age linked to the state pension age?
523. **Mrs G Nesbitt:** Our starting point will be to replicate what is in the GB Bill. It will then depend on what the Assembly decides; indeed, any amendments from this Committee will affect it. As I said, the purpose of the first draft is to replicate what is in the GB Bill.
524. **Mrs Smyth:** Following amendments. That amendment was about a report for Ministry of Defence firefighters, which we do not have here.
525. **The Deputy Chairperson:** Sorry, what was that?
526. **Mrs Smyth:** The final amendment was about a report for Ministry of Defence firefighters, and we do not have Ministry of Defence firefighters here. They are in a different scheme; they are in the Civil Service scheme rather than the firefighters’ scheme, so they have different conditions.
527. **The Deputy Chairperson:** What about our civil firefighters and the police?

528. **Mrs Smyth:** We would replicate what they are doing in GB.
529. **Ms Coyle:** There are the Assembly stages, obviously, that you can go through; the Consideration Stage and whatever, where these things can be discussed and scrutinised.
530. **Mrs G Nesbitt:** The key point is that that amendment relates to firefighters in the Ministry of Defence. That particular cadre of staff is not an issue for Northern Ireland because their pensions are not a devolved matter. That is what that particular amendment related to.
531. **Mr Girvan:** Thank you very much. I want to go back to a point that the Chair has already referred to about the Government Actuary's Department and the work that will be done at the request of this Committee. The figure of £20,000 to £30,000 for that body of work that is really just a very basic desktop exercise that, according to the evidence that we received at the last session from the unions, indicated a very blunt tool to extract accurate information. You did say, and I think it is in paragraph 4.46 of the document, that such an exercise could in fact cost between £100,000 and £600,000 overall if we wanted to go into more detail. If we are going to get similar information, it might not satisfy the people who want to know more detail. I think we need to know as much detail about this as possible, but for that figure of £600,000, would that interrogate the figures down to micro level to give us detail on each Department? Different people have different scales.
532. **Mrs G Nesbitt:** There would be a real timing issue with GAD undertaking that level of detailed work. To do that work, it would need to know from each sponsoring Department the detail of what is going to be in their secondary legislation. If the GB equivalent has a particular set of reference points for its scheme, the Government Actuary's Department needs to know exactly what is going to be followed here in that scheme and what is going to be changed. We are not at a point in time to do that, because sponsoring Departments and their Ministers have flexibility at secondary legislation stage, and they may or may not choose to do things differently. That is not a matter for me. It only becomes a concern for the Department of Finance and Personnel and my Minister when there is a cost issue. As I said before, there is scope to vary within schemes. So, the level of information that is required to get further detailed work done is not available. Given the time pressure that we are under and the deadlines that we have set, it is really not feasible to do this.
533. To further clarify, one of the issues in the piece of work that we have commissioned was that he had simply extended the 7% of pensionable pay bill cost and used that across the other schemes. That approach was not really valid or robust enough, so we are doing a little bit more. It will still be an estimate, and I keep on emphasising that point. We will be able to have a little bit more information when looking at the other schemes, but it will still be an estimate. We are not in a position to do the really detailed piece of work because we simply do not have the information or the time to do it.
534. **Ms Coyle:** It is important to point out that we are doing as much as we possibly can, and we can only make the assumption that the scheme design will be the same as it currently is in GB. The timing issue is important because, by the time the schemes get down to being developed, there may be variance in the scheme designs. I think that we are at the stage where you are actually introducing the Bill itself.
535. **Mr Girvan:** The difficulty is in getting through the window that we have. I am just trying to be devil's advocate here. If, for argument's sake, we were to vary from the Westminster Bill, the Government Actuary's Department would obviously be doing some very quick calculations as to how much that would affect our Budget. Be honest; we would not necessarily just say, "Well, give us a blanket £260 million; we will take that

- hit". We would want to know how they justified that.
536. **Mrs G Nesbitt:** Yes. If there is delay, there will be more detailed work done. The point that I tried to get across is that there will be a cost to delay. It was about trying to get a sense of what the magnitude of that quantum would be. I will not quote a percentage of accuracy again, but there certainly will be a significant financial cost to delay. It is really just to try to refine that cost more. A look at the provisions that there are, the changes that there are and even the other publications that I mentioned in my opening address, shows that there are significant changes. So, if we delay significant changes, common sense dictates that it is inevitable that there will be a significant cost. It depends what we do with our primary legislation on the cost risk, and in turn, it depends, scheme by scheme, on what they actually do with their secondary legislation on what the cost and the final sums and the financial consequences. It is a complicated and complex matter. We have tried to give as much information as possible. We have been asked to commission some more work, and we have done that. Hopefully, that will, as has been indicated to us, be available in early June. We will certainly make that available to the unions and to the Committee.
537. **The Deputy Chairperson:** Just go back to the Minister's letter, and the first paragraph, under the heading "Scheme Valuations". The Department has the power of direction to create:
- "a common framework for valuations of the public service pension schemes ... These directions will apply to all of the public service pension schemes created by the Bill. Directions will specify how the data, methodology and assumptions used in a valuation will be set ... consideration will be given to the involvement of public service employers, scheme actuaries and trades unions, when considering the approach to valuations to ensure that directions reflect individual scheme circumstances and economic and demographic changes."*
538. What do you mean there by "consideration will be given to"? Does that mean that there will be formal consultation with, for example, trade unions?
539. **Mrs Smyth:** In setting directions, we would consult initially with the Government Actuary's Department. Valuations are set out in clause 11. We are setting the cost cap for those cases where the cost of the scheme would otherwise go beyond the margins, and scheme regulations would apply that provide a procedure for the responsible authority or the scheme manager, employers and employees and members, who would be representatives of employers and trade unions, to reach agreement on the steps that are required to achieve the target cost for the scheme. You would consult with trade unions at that stage.
540. Before making any scheme regulations, the authority must consult such persons, or the scheme representatives of such persons, who appear to the authority to be likely to be affected by them. Therefore, there is a clause on consultation.
541. **Mrs G Nesbitt:** It simply replicates what is in the Westminster legislation.
542. **The Deputy Chairperson:** The authority in that case is the Department, presumably.
543. **Mrs Smyth:** Yes. It would be the responsible Department for whatever scheme.
544. **The Deputy Chairperson:** OK. Will the results of the consultation modify the scheme?
545. **Mrs G Nesbitt:** We could not predict that. Depending on the issue —
546. **The Deputy Chairperson:** Will it be a meaningful consultation?
547. **Mrs G Nesbitt:** It is a legislative requirement to consult.
548. **The Deputy Chairperson:** Is that a yes? [Laughter.]

549. **Mrs G Nesbitt:** Yes. Of course it will be a meaningful consultation.
550. **The Deputy Chairperson:** Well, we have that on the record anyway.
551. **Mrs G Nesbitt:** I am conscious of the audience. I am sorry.
552. **Mr Mitchel McLaughlin:** No you are not. *[Laughter.]* That was a very interesting little exchange. I would come at this on the basis that you have to examine the issues as sensibly and maturely as you can. Where there are anomalies or distortions, we should seek to address them. It would be no bad thing if we could level the playing field between the public sector and private sector arrangements. That is a very big ask in a single bite. We are proceeding on the basis that if you get a full macroeconomic analysis, it would set some benchmarks on which we could proceed, but would be a huge piece of work. How do we quantify what a huge piece of work is? It would take considerable time and a substantial amount of money. What does that mean? Is that the basis on which we are governing this place?
553. **Mrs G Nesbitt:** That was because it was raised specifically and that was the advice that I got from colleagues who are more experienced in economics on how it would be required to do that. I can attempt to get more information to qualify the adjectives used if that would be helpful. The bottom line is that the view of the Department and the Minister is that the case has already been made. The matters were looked at when Lord Hutton did his report. He took evidence and visited Northern Ireland, so we were included in that piece of work. Why would we want to repeat it and do anything differently? As I said, I will try to get those adjectives qualified. However, it would be significant. The question is: what is the need to do that? We are not convinced that there is a need to do any further work on the matter. Hutton set out the case and the need for reform.
554. By and large, schemes have already, at different times but within the previous decade, changed the terms for new joiners and members. Therefore, there is already inequality between people who have joined in more recent years and those who had been members for a long time. I am not sure, on a fairness issue, about how acceptable that is to a workforce. We have mixed and very different provision. As Margaret said, there will still be transitional protection; that is perfectly acceptable. Hutton was very clear that we needed that. One of the outcomes of the reform will also be to level eventually. Setting aside the 10 years and the three-and-a-half year transitional protection on top of that, there will be a level playing field for members in each sector in what they enjoy by way of pension benefits. It will address that.
555. **Mr Mitchel McLaughlin:** Are we to assume that when you refer to the fact that we were included in Lord Hutton's assessment, he did a macroeconomic assessment of the economy here and the implication of this?
556. **Mrs G Nesbitt:** I am not sure about the level at which he did it, but there is certainly reference to it in his report. I can supply —
557. **Mr Mitchel McLaughlin:** I do not understand what that means. Will you tell me?
558. **Mrs G Nesbitt:** I have difficulty in understanding what exactly macroeconomic means as well.
559. **Mr Mitchel McLaughlin:** What does "reference to here" mean? Did he come here?
560. **Mrs G Nesbitt:** Yes. He came here and took evidence.
561. **Mr Mitchel McLaughlin:** Who did he take evidence from? That is what I am trying to get at.
562. **Mrs G Nesbitt:** He took evidence from the trade unions, and he met officials. I do not have the detail to hand, but I can get it for you.
563. **Mr Mitchel McLaughlin:** That would be helpful.



564. **Mrs G Nesbitt:** He did physically come.
565. **Mr Mitchel McLaughlin:** I was aware of that; I just wanted the detail.
566. **Ms Coyle:** He sought information from us about the membership of the schemes. Grace is right: we should come back to you with the detail.
567. **Mr Mitchel McLaughlin:** You were able to satisfy Lord Hutton's questions. You said that it would be a huge job that would cost a lot of money, and so you could not do it for us, but you were able to help Lord Hutton.
568. **Mrs G Nesbitt:** Lord Hutton did that piece of work. As I said, we will get the Committee more information on that and on exactly what level of detail he went into and what evidence he gathered. I do not recall it.
569. **Mr Mitchel McLaughlin:** I look forward to that. If you were in a position to satisfy what was, allegedly, an appropriate piece of research for Lord Hutton, I do not see why we could not do the same and why that could not be made available to us at a proportionate cost. Given the extent of the public sector and its importance to our economy, there are many public sector employers who could have shared the cost on a fair and proportionate basis. They also had the information. I wonder whether it is such a mammoth job, even with time constraints. I would not like to think that we were being bulldozed into that on the basis not of any substantive costing that people have ruled out as being disproportionate but because we are out of time as it will happen anyway. The Chair asked a very relevant question about meaningful consultation.
570. The teachers' scheme has interesting variations. What are the implications across the piece, assuming that it progresses, of directions in implementation? Where you have variations in the scheme, they have a lower salary threshold for calculation purposes.
571. **Mrs G Nesbitt:** I am not familiar with the detail of the teachers' scheme.
572. **Mr Mitchel McLaughlin:** I could be subject to correction, but I think that they have a threshold of £23,000 in calculating their salary
573. **Ms Coyle:** Yes; their threshold is different from the Civil Service.
574. **Mr Mitchel McLaughlin:** Does that get abandoned? Is it subject to central direction?
575. **Mrs G Nesbitt:** The reformed teachers' scheme will be a matter for the Minister responsible for that scheme. When we are talking about valuations to inform the baseline for 2015, they are looking to have consistency in the overall approach. Again, however, that will have to be tailored by GAD to the requirements and reference points in each scheme.
576. **Mr Mitchel McLaughlin:** By "directions", we mean regulations?
577. **Mrs Smyth:** Directions are made —
578. **Mr Mitchel McLaughlin:** Will that be subject to negative or positive resolution by the Assembly?
579. **Mrs Smyth:** I am not sure.
580. **Ms Coyle:** I think that it is positive resolution.
581. **Mrs G Nesbitt:** We can check that.
582. **Mr Mitchel McLaughlin:** OK. If there is a written brief on that, I would not mind seeing it.
583. **Mrs Smyth:** I have a Treasury policy document on actuarial valuations in the public service schemes, which I can share with you.
584. **The Deputy Chairperson:** Is it not the case that directions are not usually subject to Assembly control?
585. **Mrs Smyth:** I cannot answer that.
586. **Mrs G Nesbitt:** It may be that the same term is used, but we will clarify that.
587. **Mr Mitchel McLaughlin:** I deliberately used both, because I was giving you an opportunity to tell us which it is.

588. **Mrs G Nesbitt:** Sometimes we get directions from the Treasury that are not legislative directions. We will clarify that point and come back to you. It may be a misleading term in the context of making law in the Assembly, and I would certainly not want to mislead the Committee.
589. **The Deputy Chairperson:** You painted a very attractive picture in your presentation of how equitable the transfer from final salary to the CARE option is. Is the point of that not, at the end of the day, to save money? You are moving because it costs less. It is not because you are seeking to be more equitable across the range of grades.
590. **Mrs G Nesbitt:** It will cost less; there is no doubt about that. It was one of the drivers. Hopefully, I have not misled the Committee on that issue, because the purpose of the reforms is that there will be less cost to the taxpayer. The approach was that the outcome for those who typically join an organisation and do not get promoted, or who do not have the label high-flyer, is less detrimental. Those who will be worse off over the years — and there is no doubt that some will be — will be high-flyers on a final salary scheme who have benefited at the expense of lower-paid people who have not, for whatever reason, progressed up their organisation or sector. It is about saving money — I make no bones about that — but because of the approach being taken and career average, the impacts will be less on certain sectors. It was simply that point that I was trying to convey.
591. **The Deputy Chairperson:** One of the accidental effects is that a few people might be better off.
592. **Mrs G Nesbitt:** I do not think that it is an accidental effect. I think that it is deliberate, because one of the things that Lord Hutton emphasised in his report — and I think that he was genuine in that — is that he was also looking at fairness. People have a different view about that, but we are balancing things out better between lower-paid and high-paid, high-flyers, or whatever language you want to use. That qualifies as fairer, which was his intention. Therefore, I do not think that it was accidental; I think that it was a deliberate outcome, which is to be welcomed. To be absolutely clear: the reforms are about saving money and reducing the cost to the taxpayer in the longer term.
593. **Mr Cree:** I want to make two quick points. First, the local government scheme is a funded scheme. Has any work been done to ensure that the fund is adequate, or is there any top-up anticipated by the Department?
594. **Mrs G Nesbitt:** I cannot comment as I do not have responsibility for the local government pension scheme, but I can endeavour to get you that information.
595. **Mr Cree:** I think that it is important, because it is due to go live next year. The other point that I would like you to comment on is the transitional arrangements for the 10-year period. Is any work being done on those and the likely costs involved?
596. **Mrs G Nesbitt:** No. Again, it goes back to Lord Hutton and his issue of fairness and protecting those with what are termed accrued rights. I am not aware of any detail, because it was accepted that that was the approach that we would take and that it was the correct thing to do. The Government Actuary's Department's previous estimates would have taken those transitional arrangements and such matters into account.
597. **Mr Cree:** Do you agree that they are particularly important, bearing in mind that they are more likely to affect higher-paid and longer-service employees?
598. **Mrs G Nesbitt:** They affect everybody.
599. **Mr Cree:** I am sorry, but they will not affect everybody, because people who are 30 years from retirement do not have that —
600. **Mrs G Nesbitt:** What I meant was that they affect everybody, irrespective of what salary point they are on and

- whether they are a high-flyer or a low-flyer. They affect everybody within the 10-year period. There are no distinctions or categories within that; it is simply if you were that age at a point in time. That is what I meant by “affect everybody”.
601. **Mr Cree:** You take my point that they are more likely to be longer-serving employees and, hopefully, higher on the scale.
602. **Mrs G Nesbitt:** Not necessarily, because, in some schemes in some sectors, people join and do not, for whatever reason such as not having the career opportunity or because they do not wish to, move up their organisation. Therefore, the determining factor is your date of birth at April 2012. In some organisations, that may be reflective of the people who have moved up.
603. **Mr Cree:** No work has been done on that yet. Is that right?
604. **Mrs G Nesbitt:** I have not seen any analysis yet. That was accepted as a principle very early on and has never been challenged. I am not aware of any more refinement being done to look at that.
605. **Mr Cree:** I have sympathy with people who have served 25 or 30 years. The immediate effect on them will be quite dramatic, bearing in mind that they have had the expectation of a final salary for all of those years.
606. **Mrs G Nesbitt:** That is why we have the 10-year transitional protection, and, without going into a lot more detail, there is also another window of a three-and-a-half-year sliding-scale protection before that. The key age to be is 46 and a half as of April 2012.
607. **Ms Coyle:** The thinking behind that recommendation was that people within the 10 years are much closer to their pension age and have not had time to plan for this massive change. People who are younger and not in that category of 13 or 14 years have a bit of time to —
608. **Mr Cree:** They have not earned the same benefit. That is the point.
609. **The Deputy Chairperson:** Thank you very much. Please forward any information that you said you would provide us with during the meeting.



## 2 October 2013

### Members present for all or part of the proceedings:

Mr Dominic Bradley (Deputy Chairperson)  
 Mrs Judith Cochrane  
 Mr Leslie Cree  
 Mr Paul Girvan  
 Mr John McCallister  
 Mr Ian McCrea  
 Mr Mitchel McLaughlin

### Witnesses:

|                      |                                                         |
|----------------------|---------------------------------------------------------|
| Miss Rhyannon Blythe | <i>Northern Ireland<br/>Human Rights<br/>Commission</i> |
| Dr David Russell     | <i>Northern Ireland<br/>Human Rights<br/>Commission</i> |

610. **The Deputy Chairperson:** We move on to the Public Service Pensions Bill and evidence from the Northern Ireland Human Rights Commission. We have an apology from the chief commissioner, Professor Michael O'Flaherty. Present today are Dr David Russell, deputy director of the Human Rights Commission and Miss Blythe, who is an assistant case worker with the commission. You are both very welcome. I begin by asking you to make an opening statement.
611. **Dr David Russell (Northern Ireland Human Rights Commission):** Thank you. I reiterate the apologies from the chief commissioner for not attending; he had a prior commitment this morning.
612. The commission provides advice to the Committee on whether the Bill is compatible with the obligations pursuant to section 69(4) of the Northern Ireland Act 1998. The commission will refer only to the international obligations, the treaties and the jurisprudence to which the Assembly is bound. That duty falls under section 26 of the Northern Ireland Act and requires Departments to act compatibly with international obligations.

613. The commission will not make comment on the need or otherwise of the state to reform the pension system. It is legitimate for such reforms to take place, and it falls within the margin of appreciation of the European Convention on Human Rights (ECHR). The commission will also make submissions on the International Labour Organization's social security (minimum standards) treaty to which the UK is a state party, the International Covenant on Economic, Social and Cultural Rights, and the European Social Charter. We will not comment on the type of system used to operate a pension scheme — ie, the debate over final salary or average earnings systems — nor on the details and structures for the operation of the pension system.

614. The issues that the commission wishes to raise with the Committee are detailed in our written submission and can be summarised as follows. Under clause 3(3), there is permission for scheme regulations that make retrospective provision. Such regulations are further subject to clause 23, which requires the consent of those affected. The commission raised concerns over the legal certainty of that provision, given that the circumstances in which it may be used is unclear. The concern was also raised by the Joint Committee on Human Rights on passage through Westminster of the equivalent legislation. We note that the Department has commented in response to the Committee that it would be within the terms of the scheme's regulations that legal certainty would be ensured and not the enabling legislation. In response, the commission contends that the European Court stated at paragraph 88 of the case of *Silver and Others v the UK* that:

*"A law which confers a discretion must indicate the scope of that discretion."*

615. and would, therefore, consider that in the circumstances of any legal action.
616. In respect of the revaluation of earnings under clause 9, the commission notes the safeguard of the affirmative procedures where a decrease will result, and we welcome that. However, any reduction in pension benefits would be an interference with article 1 of protocol 1 of the European Convention on Human Rights and would require justification by the Department. Although a reduction itself is not problematic, if a reduction in pension entitlements amounts to an excessive or disproportionate burden, it would be problematic under the protocol.
617. In respect of linking the pension age with the state pension age, two issues arise. First, a change to pension age may amount to an interference where a member has a legitimate expectation of receipt of it at a given age. Secondly, distinctions between categories that fall within the prohibited grounds of article 14 would be required. That is the non-discrimination provision of the convention. The commission is aware that it has not been tested in the court yet with regard to other status, but we think that there is the potential for other status to be engaged with the differentiation in terms of the prohibited grounds under article 14.
618. **The Deputy Chairperson:** Miss Blythe, do you have anything to add at the moment?
619. **Miss Rhyannon Blythe (Northern Ireland Human Rights Commission):** No, Chair.
620. **The Deputy Chairperson:** Thank you very much, Dr Russell. You referred to the concerns raised in the commission's submission. What would be the options for improving the legal certainty of clause 23? Clause 23 is the "procedure for retrospective provision".
621. **Miss Blythe:** Our concerns arose over the lack of detail. Some scope needs to be indicated as to the extent of the power to permit regulations, especially where they are retrospective. It would not be for the commission to suggest amendments to that clause.
622. **The Deputy Chairperson:** OK. Is the commission aware of any comparable provisions in other statutes that might offer a model?
623. **Dr Russell:** No.
624. **The Deputy Chairperson:** Not at the moment, OK.
625. In your view, how might the consultation requirements in subsections 2 and 3 be strengthened?
626. **Miss Blythe:** Of clause 23?
627. **The Deputy Chairperson:** Clause 23, yes.
628. **Dr Russell:** The commission has not made the issue of consultation clear in its submission. We have not really addressed the issue. Our only concern is that consultation should take place with the persons affected. In this instance, pension-holders are the rights-holders, so it would be up to the Department to ensure that the consultation was robust enough and that all those affected had input to the process. Outside of that, if you can give me more specifics, I will certainly consider them, and, if I cannot provide an answer now, we will come back to the Committee.
629. **The Deputy Chairperson:** Clause 23(2) (b) states:  
*"the authority must first consult the persons specified in subsection (3) with a view to reaching agreement with them."*
630. **Dr Russell:** Yes, and the commission is in favour of that clause.
631. **The Deputy Chairperson:** OK.
632. **Dr Russell:** Participation from the rights-holders is guaranteed in a number of the treaty bodies.
633. **The Deputy Chairperson:** The Department of Finance and Personnel (DFP) has responded to your submission. I am sure that you have seen its response. It points out that under clause 23(4):

*“the responsible authority must lay a report before the Assembly”.*

634. In your view, is there any safeguard to ensure that the report is laid in sufficient time in advance of the Committee or the Assembly considering the scheme’s regulations? Do you have a view on that?
635. **Dr Russell:** I would have to go away and look at it. The time would have to be sufficient for the Committee to consider what is proposed by the Department. In this instance, the difficulty is, I guess, that the question would arise if it were affecting the individuals. I am not sure whether article 6 of the ECHR on a fair hearing would be engaged; whether they would have the opportunity to appeal the proposals. However, to the extent that the Committee’s view is that it provides a sufficient time frame for scrutiny by the legislative body, the commission would be content at that. It would be outside our jurisdiction to make particular comment on it.
636. **The Deputy Chairperson:** OK. What is the commission’s view on the Department’s powers of direction, including, for example, at clause 12(3):
- “The employer cost cap is to be set in accordance with directions given by the Department of Finance and Personnel.”?*
637. Is that necessary or would an order-making power subject to Assembly control provide more balance?
638. **Dr Russell:** We would not comment on that. As I said at the outset, the direction from the Department falls clearly within the margin of appreciation under the protocol. So, it is perfectly within the gift, from a human rights perspective, of the Department to set down directions.
639. **The Deputy Chairperson:** OK. I will open the floor to members. Do any members have questions? Mitchel?
640. **Mr Mitchel McLaughlin:** No. I am happy enough.
641. **The Deputy Chairperson:** OK; as there is no one else, I thank you very much for your attendance and evidence. We will, perhaps, consult you in the future if the necessity arises.
642. **Dr Russell:** Thank you.





## 9 October 2013

### Members present for all or part of the proceedings:

Mr Daithí McKay (Chairperson)  
 Mr Dominic Bradley (Deputy Chairperson)  
 Mrs Judith Cochrane  
 Ms Megan Fearon  
 Mr Paul Girvan  
 Mr John McCallister  
 Mr Ian McCrea  
 Mr Mitchel McLaughlin  
 Mr Adrian McQuillan  
 Mr Peter Weir

### Witnesses:

Mr Jim Barbour  
 Mr Jim Quinn  
 Mr Sean Starbuck  
 Mr Matt Wrack

*Fire Brigades Union*

643. **The Chairperson:** I welcome to the meeting Jim Barbour, vice-president of the Fire Brigades Union; Matt Wrack, general secretary; Jim Quinn, regional secretary; and Sean Starbuck, national pensions officer for the union. The Committee wants witnesses today to focus on the Department of Finance and Personnel (DFP) response to the union's submission to ensure that the session does not duplicate evidence that we have already received in previous sessions. We would like you to focus particularly on the extent to which your concerns have been addressed by the DFP response and what further points you may wish to make in that regard. Do you want to make some opening comments before we go to questions?

644. **Mr Matt Wrack (Fire Brigades Union):** Yes, please. Thanks very much, Chair. You have made the introductions so I will not repeat them. I thank the Committee for the opportunity to make a presentation and answer any questions. The Fire Brigades Union (FBU) is a UK-wide organisation. We represent approximately 41,000 firefighters across the UK, including around 2,000 here in Northern Ireland. We represent the

vast majority of operational firefighters across the UK and here in Northern Ireland. That includes all ranks, from the newest recruit to the most senior ranks in the Fire and Rescue Service. The union has a wealth of expertise.

645. A key point for us is that we have been engaged in this debate for the past two and a half years in different parts of the UK with Westminster, the Scottish Government and the Welsh Government. We hope that our discussions with you can help to avoid some of the difficulties that we have encountered. As you would expect from a trade union, we have a number of principled views on changes to pensions, but we are not here to talk about that; we are here to talk very much about evidence. We have a strong evidence-based case about the specifics of the firefighters' pension schemes and the proposals for new schemes from 2015, which are intended to be occupational pension schemes. Essentially, our case is based on the argument that an occupational scheme must be based around the occupation. There are specific demands that are unique to firefighting that we want to address.

646. We have suggested an amendment to the draft legislation. Our amendment would insert the phrase "no more than 60" for the normal pension age (NPA) in the Bill, rather than "must be 60". That would provide legislative flexibility in Northern Ireland. It certainly would not lock you into any final decisions about what scheme you wanted to introduce or how it would be introduced. It would provide flexibility and would avoid some of the risks that exist elsewhere in the UK. It would also allow us to protect those who want to work until 60 or beyond. We have no principled objection to that. Our case is not that there will not be firefighters who are fit enough to work to 60 or beyond; it is that there are unlikely to be sufficient numbers

- of firefighters who are able to maintain their fitness to 60 and beyond. However, there will always be exceptions to that. We want to seek a pension scheme that protects those who are unable to stay in the service because of the required fitness standards.
647. There are lessons to be learned from the dialogue that we have had with the Westminster, Scotland and Wales Governments. One is that the normal pension age in the rest of the UK was changed without supporting evidence. In fact, it directly contradicts the advice of the report that was commissioned by the Department for Communities and Local Government, which stated that a pension age should be set after debate in the fire service about the appropriate fitness standards for firefighters. The process was done back to front in the rest of the UK. You have an opportunity in Northern Ireland to address that problem and prevent it from arising.
648. There are two current schemes for firefighters. One was introduced in 2006; I think that it was mentioned in the briefing that you had from civil servants. That includes a normal pension age of 60. I was party to discussions with Ministers and civil servants at the time at Westminster. The record is in the House of Commons Library. Ministers and civil servants were absolutely clear that there was an issue of fitness declining with age but that, because of modernisation and other changes in the Fire and Rescue Service, there would be the opportunity for firefighters to be redeployed as they got older into non-operational roles. The blunt fact, which we have been able to demonstrate very clearly since then, is that those opportunities do not exist. We have carried out surveys all across the UK and found that minimal numbers of firefighters have been redeployed. We found only 15 redeployed posts in English fire services. In Northern Ireland, there are no opportunities for redeployment of firefighters into non-operational roles. Therefore, that argument, which was used as a key justification for the change in 2006, has been eliminated by the evidence on the ground in the fire and rescue services.
649. The latest reforms, as described in the Hutton report of 2010, advised the Government to consider introducing a normal pension age of 60 for firefighters' schemes, based upon the 2006 scheme. Our concern is that the normal pension age for the rest of the UK was changed prior to consideration of that evidence. We think that that evidence raises questions about whether a pension age of 60 is sustainable and achievable in the Fire and Rescue Service. The heart of that argument is about fitness. Firefighting, as I am sure you are aware, is an extremely physically demanding occupation. Firefighters are sent into extremely hazardous situations. For example, in a compartment fire, while wearing breathing apparatus and protective equipment, there is no opportunity, for example, to down tools and walk off the job. Once you are into a fire, you have to do the job and then get out. Firefighters face extreme situations, and fitness standards, therefore, have to reflect the demands that an employer might require.
650. It is common sense, as everyone understands and the science supports, that fitness tends to decline with age. You can mitigate that decline through fitness training, healthy eating, lifestyle changes, and so on. We have no concerns whatsoever about that. We are signed up, through our national conditions of service, to maintaining fitness. Firefighters are required to engage in maintaining their fitness, and we have no problem with that. However, we believe that the evidence shows that fitness, nevertheless, declines with age. You can see that in the fact that Olympic athletes tend to be younger and you do not tend to see Olympic 200-metre runners in their 40s and 50s; they are in their teens and 20s. It is a common-sense argument, but one that scientific evidence also supports.
651. We have submitted to you a copy of the Williams review, which I am sure you are aware of. There are no

- UK-wide standards of fitness. There are guidelines and there advice but, essentially, individual fire services are setting standards. However, using the most commonly used standards, the Williams review found that, in the worst-case scenario, something like 85% and at least 50% of firefighters would be unlikely to achieve the required fitness standards between the ages of 55 and 60. A very high proportion, in some cases two thirds of the current workforce, would be unlikely to be able to maintain required fitness standards beyond the age of 55.
652. For us, that raises a very difficult problem with pensions policy, which should be designed to ensure that scheme members can reach the pension age and then get the pension to which they are entitled. We believe that it is wrong to create a pension scheme whereby many members are unable, for whatever reason, to achieve the pension age and have to find some other route.
653. A concern that has been expressed very clearly in England and Wales is that one of the risks is that, if the employer were unable to pay the pension and the individual firefighter were unable to maintain the required fitness standard, with no opportunity for redeployment, the employer would be left with the difficult problem of what to do with that employee. One thing that they would have to consider in such circumstances is dismissing the individual for capability reasons. They would not be capable of fulfilling their role, and they would face the threat of dismissal. That is a very real threat, which was flagged up some 18 months ago by the fire service employers in tripartite discussions in England. This is not something that the Fire Brigades Union has invented; it was flagged up as a risk by the fire service employers. We think that it is a very real risk, and one that we would seek to avoid in the design of a pension scheme.
654. We believe that Northern Ireland has the opportunity to deal with that problem before it becomes law. We want to avoid the waste of public money that would result from capability dismissals, and all the problems that would arise out of that. The best approach is the one identified in the Williams report, namely that the normal pension age should be based on the evidence and appropriate fitness standards. We have fitness standards in the Fire and Rescue Service here in Northern Ireland and elsewhere, and we think that the scheme should be based around that, rather than the other way round.
655. There is evidence from Northern Ireland surveys of firefighters' opinions, views and concerns, which, I think, clearly demonstrate a very high level of concern. There are a number of aspects to that, but I think that it comes down to confidence in a scheme. Everybody says that we want to encourage public sector workers to save for their retirement. That is good policy, but, if we want to do that, people need to have confidence in the scheme that they are being asked to join. Increasingly, our firefighters are saying that their confidence in the scheme is significantly damaged because of, first, the rising costs of being members of the scheme, and, secondly, the question of whether they can realistically expect to achieve the pension because of the pension age.
656. I move now to cost, because I am sure that public finances will be an issue that you need to consider. There are two risks in relation to the possibility that costs will increase. The savings suggested by the Treasury assume a 1% opt-out rate. Our argument is that the opt-out rates may vary greatly, depending on the starting point of the contribution. It is one thing if people are paying 5% of their salary as their pension contribution, but it is a very different position if firefighters start out by paying 11%, as is the case with the majority of them. Raising that to 14% next year for some of our members — significantly more for higher earners — would mean that a very high contribution level is being made from fairly modest salaries. If only 7% of firefighters choose to opt out, there will be no savings, and the cost to the taxpayer will increase.

- Therefore, there is a very real risk that the plans to supposedly save public money will not deliver any savings, and actually start to cost.
657. Equally, on the normal pension age argument, we think that another risk arises from the physical demands of the occupation. I joined the fire service 30 years ago. Throughout that time, there has been a campaign and changes in policies to reduce the number of ill-health retirements in the pension scheme. Such retirements have been very significantly reduced across the UK. Our concern — we think the evidence supports this — is that, if you change the pension age from about 52, which is the age at which the majority of firefighters retire, to a scheme in which the majority are expected to work until 60, a significant increase, you will see a rise in ill-health retirements. Subsequently, the savings that have already been made, or are expected to be made, will not be realised as a result.
658. We think that there is an opportunity to address that issue in respect of the normal pension age. We believe that it is best to address it at this stage and to allow flexibility, rather than to do what has happened elsewhere in the UK, which is to introduce a normal retirement age that raises subsequent problems in the scheme design that will need to be addressed further down the line. That is, essentially, what we would like to say to kick off with, Chair. I am happy to take any questions.
659. **The Chairperson:** Thank you very much. The FBU submission refers to clause 10 (5). The Department has used this as part of its defence for clause 10 (5)(a), which refers to “normal pension age” and disregards:  
*“any special provision as to early payment of benefits on the grounds of ill-health or otherwise”.*
660. The Department would argue that that covers some of the concerns that you are raising. What is your analysis of that part of the legislation?
661. **Mr Wrack:** The concern that we have about the early access to pension arrangements that is being suggested is that, again, firefighters will end up being potentially penalised. If the scheme has been designed so that a full pension is achieved, for example, at the age of 60, after 40 years’ service, an individual can plan around that. However, to then effectively be forced out of the service because of an inability to maintain fitness levels would put people in an impossible position. Our concern is that the loss that would result from taking a pension early will become unaffordable for individual pension scheme members.
662. **The Chairperson:** I have two other points. Comparisons will always be made with other occupations that need high levels of fitness, so in what ways should firefighters be regarded as over and above those type of occupations, such as police officers, prison officers, and so on? Another comparison with those areas is the issue of back office roles. What is the capacity of back office positions to subsume firefighters who reach a particular age in the Fire and Rescue Service here?
663. **Mr Wrack:** Those are two key points. I am not able to comment on other parts of the public service, but I have some knowledge of physical fitness standards in the police and elsewhere. The example of the armed forces has also been used. The truth is that you do not generally have armed forces personnel on the front line, for example, in Afghanistan, at the age of 60. The difficulty in the fire service is that, because of its size and structure, essentially, you need to be operationally fit throughout your career. If you start out at 18, you are required to meet fitness standards. If you are still in post at the age of 55, 56 or 60, you still need to be able to meet exactly the same standards as the 18-year-old.
664. That ties into your second point about the possibility of back office roles. That goes back to the debate that we had with the Westminster Government in 2006. Their argument was that, because of the changing role of the Fire and

rescue Service, firefighters were doing far more preventative-type work and, therefore, they would not necessarily be required to be fighting fires at 60 and would have other jobs to do. The evidence shows that that is absolutely not the case; if anything, those types of jobs have largely gone from the uniformed fire service. There are fewer opportunities for stand-alone inspecting roles or community safety roles, and so on, so people in the service are required to fulfil an operational role throughout their career.

665. As I said, I think that a useful way to think about it is that the firefighter who joins at 18 and meets a physical fitness standard has to meet exactly the same fitness standards at 58. We think that that is a problem. Essentially, there are not opportunities for back office roles within the Fire and Rescue Service either here in Northern Ireland or anywhere else.

666. **Mr Jim Barbour (Fire Brigades Union):** It is important to emphasise that it is not just the Fire Brigades Union that says that. We have got it in writing from our employers on at least two occasions that there simply are not those redeployment opportunities in the Northern Ireland Fire and Rescue Service. It might be convenient for us if such opportunities did exist, but they do not, hence the risk of capability dismissals.

667. **The Chairperson:** Was that from the board?

668. **Mr Barbour:** It was from the board.

669. **The Chairperson:** You referred to the work that the Department for Communities and Local Government (DCLG) is commissioning. Why is there such a lack of evidence on and analysis of fitness levels? When do we expect to see some results from that? Is it 2015 or 2016, as has been suggested?

670. **Mr Wrack:** Our most serious criticism of the DCLG's approach is that — I mentioned that we have a broader political view on pension change, but that we are putting that to one side —

we were asked to engage in scheme-specific discussions two and a half years ago, and, as a result, we invested a huge amount of our resources into investigating the fitness and the financial aspects of it, and we produced a huge amount of evidence. Our concern is that the decisions seem to have been made prior to seeing the evidence, rather than the other way round. That is the concern with the pension changes that affect us. I am not an expert on police schemes or teacher schemes, but we are pretty much experts on the firefighters' scheme. The Hutton report, which started the whole process, made the point that the Government should consider a pension age of 60, and the decision was made to introduce a normal pension age of 60 prior to the publication of the Williams report on fitness standards and pension age. That legislation went through Westminster at the end of 2012, and the report came out in January 2013, so it was back to front in the sense of heeding the evidence and reaching a conclusion.

671. You asked a question about fitness levels, and we have raised the point throughout the UK, probably for the past 10 years, that it makes no sense for us to have 57 different fitness standards. The science says that a firefighter who goes into a room that is on fire faces certain physiological challenges, and that is same whether it happens in Belfast, Glasgow or London. It would save the taxpayer money if there were collaboration in the profession on what those standards should be. We have argued that there should be occupationally based standards for fitness. We think that there needs to be rigorous fitness standards, because we are putting firefighters into extremely hazardous positions where, if things go wrong, there is a risk of serious injury or death. There have to be very rigorous fitness standards that are scientifically based, and there should be a consensus in the service on what those should be. Unfortunately, there is some degree of fragmentation in that services across the UK do different things. In England, there are different services with different

standards and approaches, and we think that there should be consistency. Northern Ireland will do whatever it chooses to do, but there is a case for collaboration and for sharing evidence and best practice among different parts of the profession. Work is still to be done, and some work is ongoing on fitness standards in various parts of the UK. We are happy to engage in that, but we should look at that evidence before we make decisions about how long firefighters can reasonably be expected to work.

672. **Mr D Bradley:** Is there a formal programme of continuous fitness training for firefighters, or do they do it off their own bat in their own time?
673. **Mr Barbour:** The difficulty is that there are probably 57 varieties of that across the UK. There is certainly a formal process in Northern Ireland, but a lot of that training will be done during time spent off duty as well on duty. In Northern Ireland, around half of our firefighters are part-timers, so it is becoming more difficult. The same principles will apply to pensions.
674. **Mr Wrack:** Jim makes an important point about retained or part-time firefighters. Clearly, the fitness standards need to be the same because people face identical risks. If there are physiological effects, it does not matter whether your contract of employment is whole time or part time, the risks are the same. Our concern about the Williams report is that retained firefighters potentially face additional risks because there is less opportunity for them to do some training in the workplace. Jim will be better placed to say what is in place, but, over the past 30 years, many fire services have gradually introduced gyms, fitness regimes and fitness policies, and that is good. However, it is a lot harder for retained firefighters to do that in the workplace in the limited time that is available to them. We encourage people to do that in their own time as well. The Williams report acknowledges that, if the employer has standards, it needs to build some of that into the work

structure and so on, whether it is advice on diet or training, the opportunity to train or guidance on how you should keep fit.

675. **Mr Barbour:** It is obviously very difficult to do that in a part-time retained context because drill nights typically last two hours, during which there is a lot of equipment to be checked and training requirements to be met, so there is very little time then to engage in fitness training. As I say, the same principles will apply to the proposed pension schemes for our part-time and whole-time firefighters in Northern Ireland, and that is extremely important. We are not talking about big earners here. We are talking about people who earn between £6,000 and £10,000.
676. **Mr D Bradley:** Matt, you said that the likelihood is that firefighters who have to continue working beyond the age of 55 may not, in many cases, be fit to do so, and that might result in dismissal due to incapability. What sort of financial settlement, if any, will a firefighter get in those circumstances?
677. **Mr Wrack:** I think that that would depend precisely on how it happened and the age at which it happened. We had a debate with the CLG fire Minister about the use of the word "choose". There is provision in the scheme proposed for England in 2015 for people to access their pension early, when they are 55. The point we made is that, if people did that, they would suffer a huge financial loss, and nobody could actually afford to do it. People would lose 40% if they exited the scheme then. I debated that with Brandon Lewis on a professional level and challenged him about the use of the word "choose". What he said is that firefighters who choose to leave early can access their pension provision early. The point we made is that, if you get to 55 and, despite all the best efforts of you and your employer, you are not able to maintain the fitness standards required by your employer, it is not a matter of choice; it is a matter of natural ageing. That is the difficulty we have. The individual could then either

- be dismissed and become a deferred member, so they would not get their pension until they reached state pension age, or be forced, effectively, to take the deferred pension and incur a significant financial loss. Clearly, our members are saying that they just cannot afford to be put in that position.
678. **Mr D Bradley:** Is it the case that firefighters would be entitled to some form of benefits in that situation?
679. **Mr Wrack:** Yes. At some point, they would become entitled to normal benefits; for example, if they were unemployed and so on.
680. **Mr Barbour:** They would certainly hope to be entitled to something, given the situation. The Williams report, which is a professional report, not a fire brigade report, says that up to 85% of them are going to be in that situation.
681. **Mr D Bradley:** So, it could end up costing the state as much —
682. **Mr Barbour:** Exactly; the hidden costs.
683. **Mr D Bradley:** — as allowing them to take retirement at 55. Is that the point you are making?
684. **Mr Wrack:** There is that element. We have spent a lot of time examining how pension schemes work over the past several years. Our point is that the costing of schemes are designed so that the majority of people should take their pension at the normal pension age. What we are saying is that, if you end up in a position where people are not able to get to normal pension age, that alters the whole structure of the scheme, and all your financial plans become untrustworthy. You might project that, if the scheme works, that is where it will be in 20 years time — for pensions, you have to think 20, 30 or 50 years in advance — but, if the whole scheme design is wrong, the whole cost structure of that scheme starts to fall apart as well.
685. That comes back to our point. You will see from the research work the concerns that Northern Ireland firefighters raised. We have done a lot of work with our members in telling them that they should not leave the pension scheme. Our members, both here in Northern Ireland and the UK, have followed that, but they are increasingly saying that, if it carries on becoming more expensive and they just do not have the confidence that they will get there, they will start looking at other options. Then, if people start to leave the scheme — it is a small scheme as it is — the costs would rise and the burden on the taxpayer would increase because there would be fewer people paying into the scheme to cover the costs. It is an unfunded, pay-as-you-go scheme, so the fewer people who pay into it, the more unsustainable the scheme becomes.
686. **Mr D Bradley:** You were saying that the decision was taken without waiting for the outcome of the working longer review.
687. **Mr Wrack:** Yes. The report was commissioned by the previous fire Minister Bob Neill and reported in January 2013. We still have not had a formal response to the report from the Government at Westminster. It has been there for several months now, but we do not know the formal response, because there are issues. The report clearly states, for example, that the decision on normal pension age should be made post a decision on national fitness standards in the Fire and Rescue Service. There has been no national debate on fitness standards in the Fire and Rescue Service, so that report clearly contradicts where we are currently.
688. The pension age legislation went through the Westminster Parliament last year and became law in November or December that year — I cannot remember precisely. The normal pension age was changed by the primary legislation, then CLG's report on the normal pension age was published, and we still do not have CLG's response to that report on the normal pension age. The point that John Hutton made in his report is that the Government should

- consider a normal pension age of 60. Again, the decision has been made and implemented in legislation when we have not considered in detail the evidence that we now have. Our point is that you have the opportunity to do that.
689. **Mr McCallister:** On that point, I am sorry if I missed it in earlier comments, but, in the case you highlighted of a man at 55 who was not medically fit to do it, is there no way you can access the pension? I am aware that, in other services, such as the army, you could get medically discharged and be entitled to a pension. Is there no mechanism under this to do something like that?
690. **Mr Wrack:** There are two points. The medical point is an important one. We believe that there is likely to be an increase in medical retirements, but everyone across the service has been trying to reduce medical retirements for a long time. The problem with fitness is that it does not come under the criteria of medical retirement because it is not an illness. The fact that you are older and that your lungs do not work as well as they did 20 years earlier is not an illness. To get medical retirement in the scheme, and probably in most schemes, there has to be an injury or disease. There is a list of those compiled by the World Health Organization, and the grounds for medical retirement has to meet one of those definitions. Clearly, declining fitness is not a disease. That was flagged up by the Fire Service employers in our tripartite discussions. There may be people who are more likely to have a health problem, such as those with a permanent bad back. So, there will be an increased likelihood of an increase in ill health. However, such people would not be covered by ill health criteria and would not have access to medical retirement. They face the risk of the employer not knowing what to do with them. They cannot now do the job, and the employer cannot pay the pension or redeploy them. That is where the no job and no pension risk comes in.
691. The Westminster Government has tried, partially, to address that through the early-access-to-pension provision, but the current formal position is that people would lose something like 40% of their pension by taking that. Our key point is that, if you have to encourage people in that situation to do that, it shows us that the scheme itself is just badly designed. It is not designed around the occupation, but around a broad-brush stroke approach to pension changes.
692. **Mr McCallister:** Does that work out at about 4% a year? Is that where your figure of 40% comes from?
693. **Mr Sean Starbuck (Fire Brigades Union):** It costs —
694. **Mr McCallister:** So, if you were fit to work on a bit after 50, it would be on a sliding scale. Thank you for that.
695. **The Chairperson:** On the point about flexibility, Matt, do you see it being DFP's position that firefighters can simply leave the job before 60, rather than carrying on with a reduced pension?
696. **Mr Wrack:** Yes, the Department is saying that. Those provisions for firefighters beyond the age of 50 are in the draft scheme. There is still some debate going on about whether it is precisely age 55 or 57, so that is not finally pinned down. The rules of the scheme have not yet been drafted, so we do not know precisely where that would end up. However, some form of early access to pension would be given. The debate would then be about how much the individual would be penalised financially for taking it. Members are saying that they cannot survive on that. At 57, 58 or 59, they will be left asking what they are supposed to do.
697. A point that a lot of our members raised is worth noting. It is perfectly reasonable not to join the Fire Service until 25. Lots of people, 30 years ago, were joining at 18, 19 or in their early 20s. There is now a trend for people to join later. If you do not join until you are 20, to attain a full pension, you would have to stay until you are 65. If you joined at 30, you would have to wait until you were 70. So, for people to achieve the full pension that the Westminster Government talk



about, they would not just have to work until they are 60, but potentially well beyond that age.

698. **Mr Barbour:** The key point here is that firefighters know, and the Williams report tells them, that up to 85% of them will not make the age of 60. They know in advance that they will not make the NPA of 60, and those 80% are going to lose 40% of their pension. Contributions are now ever increasing. I am at 13.2% now, and due to go to 14.7% next April. Therefore, the issue is this: why would you bother going into a scheme that is intrinsically unsustainable? It is no longer an occupational scheme in any sense. Therefore, people will opt out, and the Government have their figures wrong. The 1% that they project in England comes nowhere near to the figures that will manifest themselves. It is self-defeating.
699. **Mr Wrack:** Let me make a point on Jim's point. We do not have figures for Northern Ireland, but we have figures that we eventually teased out of the Department for Communities and Local Government that show that some 25% of full-time entrants into the Fire Service last year chose not to join the current new firefighters' pension scheme (NFPS). Until recently, participation in both schemes was probably 95% plus, and probably even higher than that. It is clear that, currently, large numbers have not opted out. It is a big decision to leave a pension scheme once you have committed a lot of money to it, but that is different from the people coming into the service and deciding whether that scheme will work for them over the next 40 years or so. It is early days, but that is an alarming figure, and that is before the full increases are in place. That should set alarm bells ringing across the Fire Service and among policymakers.
700. **Mr Mitchel McLaughlin:** That is an important point. In allowing for long-standing membership of and contribution to the schemes, you have to make allowance that that really restricts the options for people in that circumstance. Given that England and

Wales are more ahead of the curve than us regarding these reforms, is evidence emerging of recruits opting out that would contradict the projections of the Government, and can you share that evidence with us?

701. **Mr Wrack:** We commissioned independent surveys of firefighters, one was two years ago and the other a year ago, about their expectations of pensions. We did them independently because we wanted them to be evidence that the Government would take account of, and they acknowledged that. At even the early stage, some 27% of firefighters reported that they would seriously consider opting out if all the changes went through.
702. Some may say that they will live with a contribution that is a bit higher or this and that, but when you put it all together and they realise that they have to pay that much more, and increasingly fear whether they can get to pension age, they say that that may be the point that tips them over the edge. Somewhat alarmingly, some said that they will go off and invest in property or whatever. We have been clearly saying to people that all those alternatives are very risky and that this was a life-changing decision.
703. As an organisation, we think that we have adopted a responsible approach of encouraging people not to opt out. Contrary to our evidence, we have probably helped to stop opt-outs increasing as a result of our arguments. Sean is our national pensions officer. He has been around the country advising people not to leave the pension schemes and that we are still putting forward a case.
704. I have been shocked at some of what members say. Young firefighters coming in who are members of the union say that it is coming down to choosing between paying their mortgage or pension contributions, and that they have to keep their house. That is when it becomes unsustainable, and it will get worse.
705. **Mr Mitchel McLaughlin:** Does your research indicate, as a result of what

- the Government are arguing or your own efforts to convince people to act responsibly and think strategically about their pension entitlement, that the outcome of the stats, as they affect new recruits, goes towards the Government's position more than yours?
706. **Mr Wrack:** No. Currently, we do not have an opt-out rate higher than 1% across the UK because people are waiting to see what the outcome of the discussions will be and are following our advice.
707. **Mr Mitchel McLaughlin:** But you can see that the Government would seize on that.
708. **Mr Wrack:** That was why there was a reluctance to give us the figure for new starters. When 25% of new starters have not joined the pension scheme, which is what the figures show, that should set alarm bells ringing on that point.
709. We do not have figures for Northern Ireland on the savings issue. We have figures for England, but the calculations from the Treasury will be the same. Only 7% of firefighters deciding to opt out of the pension scheme would eliminate all savings and start to cost the taxpayer additional money regarding what needs to go into firefighters' pensions.
710. **Mr Mitchel McLaughlin:** Has the experience in England and Wales so far demonstrated any equality impact for women firefighters, for example?
711. **Mr Wrack:** There is a very big equality issue to do with fitness. That is very much highlighted in the Tony Williams report. As you will be aware, there has been a huge debate for 25 years in the Fire Service about equality and diversity. A lot of measures have been taken to address that. For example, there are far more woman firefighters in the Fire Service than there were when I or Jim Barbour joined.
712. Coming back to my point about fitness standards, if there are physiological effects on the body from entering a compartment fire, it does not matter whether you are a man or a woman. There are certain minimum standards that you need to reach, and that is likely to mean that there are lots of women who can meet those standards, but there will tend to be fewer of them than among men. As fitness declines, it affects both sexes, and Williams is very clear:
- "There is likely to be a substantially larger proportion of women firefighters who are physically and/or medically unfit over age 55."*
713. So, there is very definitely an equality aspect to that issue.
714. **Mr Girvan:** Thank you for your presentation. The uniqueness of the Fire Service system has to really be considered, and the age issue is probably the key one. Has any work been undertaken on Dominic's point? He mentioned people who have to leave not because of health but because of unfitness. As a consequence, they are leaving a job and are not going to receive any payment or access to benefits for that period. I appreciate that you have a figure for when most people will have to leave. You said that 85% —
715. **Mr Barbour:** Up to 85%. The Williams report says that.
716. **Mr Girvan:** Working on that figure, they will have to leave between then and reaching pension age. They could draw down some of their pension at a vastly reduced amount, so they will still be a burden. I do not mean that in the wrong way, but they will still have to draw from the public purse. Has any work been undertaken by you to identify that?
717. There are further proposals that you could put forward around possibilities that we could include in amendments to what is there. You have to get a balance between what your members require and the costs associated with that. At the end of the day, if we make adjustments, we have to make that up out of another part. The part that I am identifying here is annually managed expenditure (AME), which comes from benefits. Irrespective of the way that you look at it, it is all coming out of the same pot. If you can

- identify what that will be, we need to be able to see some of those points. It would be very helpful for us to have some indication about where we stand.
718. **Mr Barbour:** I will take that while Matt is doing a bit of checking up. What we have here is an ideological perspective from the Westminster Government. They should have been doing the work to identify the costs of all these changes. The fact is that they had no interest whatsoever in doing that because they simply wanted to change public sector pension schemes.
719. **Mr Girvan:** I appreciate that, in some ways, the rest of the Civil Service is different from the Fire Service. You fall into a category where you must reach a certain standard of fitness. You can sit behind a desk in a wheelchair, but you cannot go and attack a fire. The point is that I want to find out where we are. You are not talking to people who are trying to shaft you. We are trying to do our best to see whether accommodations can be made in any way that will minimise the impact on people from Northern Ireland. We are trying to make a very sensible argument about what happens if people have to leave their job at age 53 or 54 because of unfitness. They will have to require benefits for maybe 14 or 15 years.
720. **Mr Starbuck:** The Hutton report included some stuff around returner rates for what you would need in retirement. Firefighters are saying that they probably need two thirds of their salary to retire, and the scheme is based around giving two thirds of your salary on retirement. We have not done the work in detail that you outlined, but you can see that, if people have to go after 15 years of service but are unable to access their pensions until, potentially, they are 66 or 68, they are totally dependent on the state until that time. Even if they can go at age 55 with a 40% reduction, they are not going to hit the two thirds replacement rate that they need, so they are going to be a burden on the state. That is probably something that we will have to do a little bit more work on.
721. **Mr Girvan:** The issue is that, statistically, it is so difficult to get re-employed after you reach 50. It is difficult to find another job.
722. **Mr Starbuck:** These people still have mortgages; they still have everything to pay. They have covered that by paying into the pension scheme.
723. **Mr Wrack:** You could make an argument that, if it is a youngish person's job, fine, go and get another job, but if someone has committed themselves for 35 years to a career in the Fire Service, it would be difficult for them to do something completely different. Some of them may well do, but it becomes increasingly difficult to retrain for another job at that point.
724. **Mr Girvan:** But you would like some words in it to say that there is that possibility for those who are up to it. There are the exceptions; there are some who are extremely fit and could be willing to stay on. There could be some wording along the lines of, "no more than 60".
725. **Mr Wrack:** I want to be clear: we have no objection whatsoever to people wanting to stay on as long as they are fit enough to do so. Clearly, there are people all across the UK and here in Northern Ireland who maintain their fitness well beyond that age. The old scheme — the scheme that I joined — was probably a disincentive to stay on, but the 2006 scheme and the proposed new scheme are an incentive to work as long as possible because you continue to accrue pension. Financially, it is in your interest to work as long as possible. We have no objections to that aspect of it at all. However, it is unlikely that there will be firefighters in sufficient numbers who are able to maintain fitness at that level to run an efficient fire and rescue service.
726. **Mr Girvan:** There is no evidence to prove that the Fire Service has ever tried to create a bureaucracy or a level of administration that would allow personnel who have gone from the front

- line to move to the back office. That has never been an issue.
727. **Mr Wrack:** No. I do not know about Northern Ireland, but elsewhere, 20 years ago, there would possibly have been more opportunities. The chance has always been small because it is such a small service anyway and it has been focused on operations. The overwhelming majority of the workforce is operational, and that is even more the case today.
728. **Mr Barbour:** There were more opportunities across the water for redeployment. We were in a different situation because we have not been a local authority fire service since 1973.
729. I note your earlier comment about broadening it out. Our suggestion is that clause 10(2) should be amended to add wording such as:
- “set in scheme regulations but must be no more than 60”.*
730. It will be very non-specific in opening that. It is about creating flexibility at this stage.
731. **Mr Wrack:** The amendment is worded so that if, further down the line, you do not agree with us, it does not prevent you from doing whatever you decide to do. It gives you the flexibility to have a range of options that you might want to consider.
732. **Mr Starbuck:** As it is currently written in primary legislation, it takes away all the flexibility for people to be able to get out before 60 without the actuarial reductions that we highlighted.
733. **Mr Barbour:** As it is currently written across the water in Westminster, it takes that away. That is why we want something slightly different here.
734. **Mr McCallister:** Jim, you mentioned contributions rising to 14.2%.
735. **Mr Barbour:** I am at 13.2% at the moment, John. I am due to be hit with another 1.5% next April.
736. **Mr McCallister:** So, it will be 14.7%.
737. **Mr Barbour:** It will be 14.7%. There are people in the room here who will pay even higher contributions than that; they will pay around 15% by then.
738. **Mr McCallister:** What is the employer's contribution at that level? Are they matching that?
739. Matt made a point about the levels of opt-out that you are already experiencing. Do you think that that is solely due to the new pension arrangements, or is it part of our wider economic picture? If you look across all types of employment, our levels of pension uptake are fairly low in places; people are putting off pensions until they are into their 30s and 40s because of financial pressures such as mortgages, family costs and all those sorts of things. I would like your thoughts on whether that is solely due to the change.
740. **Mr Barbour:** The Government are proposing to change radically the ratio between employee and employer. We get the economic arguments in the background. Sean has the detail of what the 2015 scheme will look like, particularly the government proposals. There is a huge shift in the ratio. That is one of our big concerns.
741. **Mr Wrack:** We have the figures; we can provide them in writing if that helps. The old one would have been about 2:1. That is the old scheme, not the 2006 scheme. That is a closed scheme, so it will gradually phase out. The ratio is shifting because of the increase in employee contributions. Is the current scheme a little over 1:1?
742. **Mr Starbuck:** The NFPS is about 1.8:1. It is coming down because the employee contribution goes up. It started off at 8.5%, and it will potentially end up at 13.2%. The original NFPS was 14.5% from the employer. It started off at about 1.8:1. The new 2015 scheme is where it gets to almost 1:1; it is actually 1.05:1. That is probably one of the worst in the public sector even though we have one of the highest contribution rates. Firefighters would start off paying about

- 13.2%, and the employers would be paying 13.8%, so it has come right down to almost 1:1.
743. **Mr McCallister:** That is one of the reasons why I would say to anyone that, if your employer is putting in 14%, it is madness to opt out of that. I come from a background of self-employment. I put in my contribution and get tax relief on it, but nobody else is putting in another 10%, 12% or 14%. I accept that it is a huge change from a 2:1 or a 1.8:1. Is it your sense that people are being forced out because of that scheme or the wider financial pressures in the economy?
744. **Mr Starbuck:** It is because it is becoming more and more unaffordable to people coming into the scheme. Matt talked about the normal pension age of 60. People are thinking that they will not make 60; they think that they are potentially looking at reaching 55, paying a lot of money to reach 55 and losing 40% of their pension when they do so. That is what people are saying.
745. Mitchel said that the government opt-out figures at the time were less than 1%. We have done a lot of work to tell people not to opt out. We have said to the Government that they should not just look at how many people have opted out; they should look at what they are saying about what they are going to do in the future. The ResearchWorks document, which includes the attitudes of firefighters, reveals that a lot of them are saying, "As soon as I see 60, I have to go because I am not going to reach that point." We ask you to look at what Northern Ireland firefighters are saying about it as well. They are listening to us at the moment. I am with you on that. However, a scheme in which somebody puts in the same amount as you is a good scheme. We are not saying that firefighter schemes are not good. That is why we are trying to defend them. If they were no good, we would not be sitting here. The point is that firefighters are saying that they are becoming unaffordable. If the opt-outs become too much, they will be unsustainable, and the taxpayer — the very people we are trying to protect — would end up paying it on a pay-as-you-go scheme. They would also be unworkable because people cannot get to the NPA of 60. It is a mixture of all three.
746. **Mr McCallister:** In an earlier answer to Dominic's question, I think that I picked up that, in certain pension schemes, if you collect them early, it is roughly 4%. However, you are worse off because your retirement age is 60. I was working on 65, which is the 40%. You would lose —
747. **Mr Starbuck:** If you take an actuarial reduction, it is not from the normal pension age of 60 but from the state pension age of potentially 68 for some people. So, in the worst-case scenario, you would go at 55 and potentially lose 4% a year until you are 68. We are looking at that.
748. **Mr McCallister:** That clears it up. If I was a firefighter and said, "I am going to have to retire at 57, and I am only three years off", I am not losing 12% at that point. You are saying that, if somebody my age is in line to retire at 67 —
749. **Mr Wrack:** We are still discussing the details of that. That bit is immensely important. When is the actuarial reduction calculated from and how much is it? Is it 57 or 55? We do not have a final position on those issues, and those are the sorts of questions that our members are asking. We are not able to answer that because we do not know the final position on, if you went at 57, for example, how much you would be penalised.
750. **Mr McCallister:** That is absolutely huge. Suddenly, if you went at 57 and were losing 12%, it might be more manageable.
751. **Mr Barbour:** It is a game-changer, John.
752. **Mr McCallister:** Absolutely, Jim. If they suddenly get penalised for 12 or 13 years, it is just a non-starter.
753. **Mr Wrack:** I will make a point about the contribution ratios: that is, how much does the individual scheme member put in compared with the employer or the taxpayer, however you want to term it.

One of the points that we have debated with the Westminster Government is the generosity of the scheme. As Sean said, we want quality schemes, and we accept that we have had quality schemes. That is important. However, the end ratio after 2015 for firefighters will be one of the worst in the public sector. We presume that generosity means how much does the employer put in compared with you. So, compared with virtually everyone else in the public sector, it will become one of the worst schemes and, therefore, in our view, one of the least generous in the public sector.

754. **Mr McCallister:** The ratio will, but the percentage, as in the government contribution, is probably still quite generous, is it not?
755. **Mr Starbuck:** It is what you get for your pound.
756. **Mr Wrack:** If you measure it by asking how much am I, as a scheme member, putting in compared with my employer — we think that that is the reasonable way to look at it — it is not the most generous at all. I take your point that there is still an employer's contribution. We acknowledge that.
757. **Mr McCallister:** As Jim said, the other stuff is a game-changer, because it is fine to have provision for medical retirement, but you have that huge grey area of people who are unfit but not medically unfit. That will be a game-changer.
758. **Mr Barbour:** That is one of the areas that our Scottish colleagues have sought to address, and, in recent days, they have found some sort of a resolution to it. So, it can be done within the framework of a devolved Administration.
759. **The Chairperson:** Gentlemen, thank you very much. We might send some written questions your way after the session.

## 9 October 2013

### Members present for all or part of the proceedings:

Mr Daithí McKay (Chairperson)  
 Mr Dominic Bradley (Deputy Chairperson)  
 Mr Paul Girvan  
 Mr John McCallister  
 Mr Ian McCrea  
 Mr Mitchel McLaughlin  
 Mr Adrian McQuillan  
 Mr Peter Weir

### Witnesses:

|                    |                                                 |
|--------------------|-------------------------------------------------|
| Mr Harry Baird     | <i>FDA</i>                                      |
| Mr John O'Farrell  | <i>Irish Congress of Trade Unions</i>           |
| Ms Nuala O'Donnell | <i>Irish National Teachers' Organisation</i>    |
| Mr Bumper Graham   | <i>Northern Ireland Public Service Alliance</i> |

760. **The Chairperson:** Folks, you are very welcome. Bumper, do you want to introduce your panel?

761. **Mr Bumper Graham (Northern Ireland Public Service Alliance):** Yes. On my left is Harry Baird from the First Division Association and Nuala O'Donnell from the Irish National Teachers' Organisation. I am from the Northern Ireland Public Service Alliance (NIPSA). John O'Farrell is from the Irish Congress of Trade Unions.

762. **The Chairperson:** Do you want to speak on the proposed amendments?

763. **Mr Graham:** Yes. We were in for most of the two earlier sets this morning. Although they came to give specifics, they strayed into some of the wider generalities. Our approach is as the single Irish Congress of Trade Unions group representing all the unions. We also continue to liaise with the affiliates and non-affiliates.

764. Since we last met, I have been disappointed by the quality of the engagement that we have had with

Department of Finance and Personnel (DFP) officials. We established the public service pensions group. I noticed that, in its response, it referred to the consultation arrangements. We will set aside the dispute over consultation and negotiation. It referred to the work of the Master of the Rolls, Lord Woolf, and its own work on the Gunning principles, but it has not applied those by engaging in positive, meaningful consultation. When you look at DFP's response to you, you see that it has become the master of lengthy paragraphs that say no. It could have probably shortened its response and just said NO in capitals to cover all the points that we made.

765. We met the Department as recently as last week, but disappointingly there was no engagement with us in terms of their response to you on the points that we raised. In the engagement process, we are genuinely trying to deal with normal, standard industrial relations arrangements in negotiating with the representatives of employers. I have to say, wearing my Northern Ireland Local Government Officers' Superannuation Committee (NILGOSC) scheme hat, that in DFP's response to you there is a considerable power grab by it in areas that heretofore were the responsibility of the Department of the Environment (DOE), given the unique difference between the NILGOSC scheme, as the single funded scheme, and the other unfunded schemes, in which you could understand DFP's wider interest, because it is responsible for the allocation of moneys to Departments.

766. Again — and it cropped up, I think, in the Fire Brigades Union (FBU) discussion this morning — the Committee is understandably looking for specific Northern Ireland data. We have made constant requests for the data for the Northern Ireland schemes. We reiterated that request last week and went through the type of data that we need, such as

- the numbers in schemes, the gender breakdown, those that are within the protections outlined in the Public Service Pensions Act at Westminster, and a range of other data. DFP's response was, "You had better write to us". We have been pressing for that data — as, I think, you have since we were first in here — but we keep getting fobbed off by DFP officials. If we cannot get the data, that makes it difficult when you rightly ask specific questions on the evidence points, whether it be of us, covering all the unions, or specific unions.
767. Bizarrely, the Government Actuary's Department (GAD) letter also says, "We did not have the schemes' data". I have been dealing with actuaries since about 1980, and I have defined actuaries as a pretty pernicky bunch of people who are fairly precise in what they provide. Yet, here we have the Government Actuary's Department saying, "We provided this information without scheme-specific data, and our figures could be £100 million out. It could be £250 million, £300 million or £350 million". I have never experienced actuaries coming forward with such a range. It goes back to the point that it did not do a detailed piece of work because it did not have the data.
768. Most worrying, to some degree, is DFP's pretty flippant approach to what we call the "Henry VIII" clauses, such as clauses 3(3)(b) and 9(2). I know that the Human Rights Commission gave evidence on that last week. DFP is saying, "Oh, we have no intention of doing these things. Trust us." Well, asking a public servant to trust DFP in the current scenario is beyond the bounds of any reasonable person's expectations.
769. I will touch briefly on other issues. The ill health point featured again this morning. Paul raised the issue of, well, if it is not ill health, and you then just go on to benefits, what is the degree of subsidiarity for that? On the one hand, you could say that that would come out of the AME and the Westminster pot, but it is still a cost on public expenditure. The other side of the coin is — we are pressing DFP on this point, but it will not move on it — that if you increase the normal age of retirement, the propensity for ill health retirement increases, and that becomes a cost on the scheme. You then get into cost-capping issues. That then will potentially breach the ceiling, and then it is only the employee's pay for any breach of the ceiling.
770. In the past day, we have received the latest Treasury guidance on the directions that it is going to give. DFP has not given us a commitment that it will formally engage in proper negotiations with us as to how the directions may be applied in Northern Ireland. We are concerned that the evidence that the Trades Union Congress (TUC) has already given to the Westminster Government about that suggests that this could be loading costs on to the scheme, which will breach the cost ceiling and, again, falls back on the employees to pay for, despite the fact that this was supposed to be a guarantee for 25 years of stable, settled public service pension schemes.
771. I have two other brief points. I think that the FBU submission this morning mentioned that clause 8(1) still provides for the creation of other schemes, which could be defined-contribution schemes. Again, we go back to the point that this is supposed to be a settlement for 25 years. Why, then, have the proviso to introduce other schemes that are much worse than even what is being proposed through the current changes? We do not see that there is any scope or need to have those provisions if this is supposed to be a 25-year settlement on public service pensions.
772. There is one last general point that I would like to raise with you, and I only got this information last week in my role as a member on the committee of the NILGOSC scheme. The actuaries for the scheme, Aon Hewitt, produced a report for us, because it is the triennial review of the funded scheme, and life expectancy in Northern Ireland is not going in the direction that everybody



thinks it is. At 2010, at the last actuarial evaluation, it projected the life expectancy of men at age 65 to be 87·9 years. It has now reduced that to 87. For a woman aged 65 in 2010, life expectancy was 90·7, and that has been reduced to 89·5. That is one piece of firm evidence that we have that goes to the point that we have made in previous evidence sessions with you: that the improvement in life expectancy was going, to some degree, up on the graph. We thought it was beginning to taper out, but here is hard, imperial evidence from the actuaries that there has been a reduction, albeit a slight reduction, in life expectancy and mortality in that one Northern Ireland scheme.

773. We propose, in the absence of DFP giving us access to all of the data, that that is probably being replicated in the other schemes. If you increase even further the age of retirement, then we will see a further and quicker drop in life expectancy.
774. **The Chairperson:** Bumper, the British Medical Association (BMA) pointed out in its submission the ‘Working Longer Review’ and the planned increase in the normal pension age for staff in the NHS pension scheme of 68, which is currently being undertaken jointly by the Westminster Government employers and health unions. Are you involved in that in any way? What is your awareness or analysis of that?
775. **Mr Graham:** The health unions in Northern Ireland have some access to that information, and we will see the report when it comes out, but it is only dealing with England and Wales. One of the things that we proposed was that there should be a single exercise undertaken in Northern Ireland across all of the schemes — and, again, we have had a negative response to that.
776. **The Chairperson:** How concerned are you about clause 10(3)(a) and the state pension age deferral, as we talked about earlier?
777. **Mr Graham:** Well, the Government are currently saying that they are going to increase state pension age to 66 and then 67 from 2026, I think. They are projecting that it will go to 68 quickly thereafter, with a review in every Parliament of what that age will be. However, given what Prime Minister Cameron is saying they will do to welfare reform in their next manifesto, we anticipate that, if the Conservatives are re-elected, they will bring forward to a much earlier date an increase to age 68, and not wait until after 2026. That will impact even further on job opportunities. I know that you are hearing from the Nevin Economic Research Institute next week, and its paper on that is fair and balanced and identifies the problems for the labour market from increasing the age of retirement. If you then increase the rate at which you push up the state pension age, that position becomes even more acute.
778. **The Chairperson:** Just judging from the evidence submitted by all the unions today, there seems to be a trend, and they are saying that there needs to be a bit of flexibility in the Bill, and also that the Assembly should have a stronger voice in the proposals. If the state pension age, for example, was to change, we would, as the Bill stands, have no influence over that. Do you agree with that?
779. **Mr Graham:** We would encourage that flexibility. Different members in different schemes can make different arguments that are specific to their circumstances. However, in the general run of things, there is value in what I call the flexible decade of retirement. If you took whatever age it is as the normal retirement age and had a range plus or minus five years, for those who would go early, as many are likely to stay on past the normal retirement age, particularly projecting forward when you look at the general economic position of people coming into work later in life or coming in and having to clear, particularly if they are graduates, student loans, and the whole issue of getting onto the property ladder. They may decline membership of the occupational pension scheme in the early years of their career, and seek

- to join that later on. Therefore, as time passes, more people are liable to stay, if fit and if everything else is a fair wind for them, beyond the normal retirement age to get a better pension. However, for the next 10, 15 or 20 years, that flexible decade of retirement provides an option for all parties.
780. **Mr John O'Farrell (Irish Congress of Trade Unions):** I want to mention one segment of the labour market that you would maybe find working beyond 65 if that flexible approach were extant. One significant sector of the labour market that will be affected will be women who may have taken career breaks for child-rearing or for other caring purposes and were then given the opportunity to continue working beyond a cut-off point of 65 or 66 and, therefore, build up their pension entitlements. As you know, one of the key problems of pensioner poverty involves women whose pension contributions were affected by taking breaks in career for child-raising purposes.
781. **Ms Nuala O'Donnell (Irish National Teachers' Organisation):** The issue with the linking of the state pension age to the normal retirement age is that it is on the main Bill and applies to all public services. As you have heard this morning, there are differences across each sector. The accrual rates are different within each scheme, and the contribution rates are different, but everybody will then have this imposed in linking that, which is actually what is causing the problem. In 2006 and 2007, each scheme was able to sit down and negotiate on the actual scheme issues and those that apply to the individual scheme members. At that stage, we agreed with the teachers that 65 would be the age, but for those who entered the scheme from 1 April 2007, and that is something I want to correct from earlier: it does not apply to those who were in the scheme prior to 1 April 2007. The issue is that it removes the flexibilities that are needed and that are different in each of the schemes. It could be left to the schemes to determine the issues for each scheme and to work out the issues, and that was done previously and was agreed. They were slightly different across each scheme, but they apply to the individuals in those schemes.
782. I want to pick up on what the NASUWT said, because I am here representing the Northern Ireland Teachers' Council, which represents all the teacher unions as well. The issue with managers is that there are more of them post-60. Part of the reason for that is that they do not have a route out prior to that age. They are not eligible for redundancy packages, because they can only go if the post is being made redundant, unless the school is closing, in most instances, or the number of vice-principals is being reduced from two to one or from three to two or whatever. That is one of the reasons why they are still there: they cannot actually get out before 60, and that is why there is a slight imbalance there. There are a number of reasons, but the main issue for us is that if it is removed from the primary legislation the issues can be addressed in secondary legislation, but if it is still there those issues cannot be addressed at all.
783. **Mr D Bradley:** Does the Northern Ireland Teachers' Council broadly share the analysis of the Bill that you heard this morning from NASUWT?
784. **Ms O'Donnell:** In the main, it does, Dominic. There were a few issues, as I highlighted. The main issue for the Northern Ireland Teachers' Council is the linking of the state pension age with the normal retirement age, and the lack of flexibility in relation to the secondary legislation.
785. As Bumper has said, one of the key issues for teachers is the lack of access to the actuarial valuations. We have not had one for so many years. The 2008 — there is now a consultation from the Department of Education which is talking about removing that and just doing the 2012 one. It means that we are negotiating in a vacuum and being told that the scheme is in difficulty, but we are not being given any information

- in relation to that, which is causing its own problems. That is another issue.
786. **Mr D Bradley:** On that point, Bumper, it is obvious that Committee members and Assembly Members in general will look at the possible costs of any modifications that we make to the Bill to shape it for the local situation. Are you saying that it is almost impossible to find accurate figures on that?
787. **Mr Graham:** Currently, yes. It goes back to the point that I made earlier about the GAD letter's approach to it. That is why we have been pressing, first, in our discussions with departmental officials, to provide all the data to us, but secondly, that before any propositions could be brought forward we would have to have a full actuarial review. That, then, goes into the issue of the cost ceilings. If you do not have a full actuarial review to provide you with a sound basis for the design of the new scheme, how do you determine what the ceiling is going to be and what measures may be taken three years down the line to get the costs back within the ceiling or determine how much employees would have to pay additionally or see benefit changes?
788. I have never gone into a set of negotiations where the employer has not done their homework. If you go in to talk to any employer on a pay claim, they will work out to the third decimal point what the cost will be. I remember having negotiations 10 or 12 years ago with DFP as to what 0.0001% of the NICS pay bill would get you, but here, when it comes to pensions, which is big numbers, there just seems to be an attitude that it will work out in the wash at some point. As I said earlier, I have never met actuaries who took that approach, other than the Government Actuary's Department aided and abetted by DFP.
789. **Mr Mitchel McLaughlin:** I was about to give up there, because I am really under pressure for another meeting. There are a couple of issues that clearly run across not just your position but most of the trade union side's evidence. The NIPSA position is, clearly, that it has stated its opposition to the CARE model. The equality impact assessment that was conducted in England and Wales came up with an argument that it actually benefits people who are on a lower salary progression, women, minority ethnic groups in particular, and people with disabilities. Have you considered that as an argument or evidence that impacts on your proposition?
790. **Mr Graham:** To be fair, the NIPSA position is that the CARE scheme could in some cases benefit some people but in other cases be detrimental. We would want to see all that extrapolated out. The difficulty for NIPSA is that it has members in a number of the schemes. You cannot compare someone in the Civil Service scheme, who has an accrual rate of approximately one forty-fourth but only indexation by the consumer price index (CPI) with someone in the health service scheme who has an accrual rate of one fifty-sixth but indexation of CPI plus 1.5%. That is why it is very difficult to come to a general conclusion about CARE.
791. **Mr Mitchel McLaughlin:** Even if some of your affiliated unions accept CARE?
792. **Mr Graham:** Some do, and some do not. It depends on which scheme you are in, and it relates as much to the accrual rate and indexation in a scheme.
793. **Mr Mitchel McLaughlin:** I do not have to tell the people on this panel, in particular, because you have a very focused interest on what goes on at the Assembly, that, setting aside assumptions that GAD has provided, there is no question that there is a cost factor to be calculated for a differential approach adopted by the Assembly. Have you considered how we can crack that particular conundrum? You probably broadly accept that Members would be empathetic and sympathetic to the workers.
794. **Mr Graham:** We accept that the view from Westminster is that there is a cost dimension to it. That goes back to Paul's point as well: how much of that

- is then offset by subsidiarity through the benefit structure? That is why we say that for every scheme published, all the data should be produced so that we can make these assessments. We may consider, given the price of them, whether it is worth our while to engage actuaries. However, until we get all the scheme data and the triennial reviews, it would not be worth our while even to contemplate doing that. The first thing that an actuary is going to say is, "Give me all the figures that need to be thrown into the computer, and then we can tell you that, if you do A, it will cost X, and if you do B, it is going to cost Y."
795. **Mr Mitchel McLaughlin:** I perfectly understand that as a technical approach. However, that does not help us, as representatives in the Assembly, and you to come to a common position. Westminster controls the benefits element of the subvention. We really are between a rock and a hard place. Is there not a better possibility? I do not know whether you can do it without prejudice, but there should be a discussion that allows you to develop a position that tailors the reforms here to that kind of realities.
796. **Mr Graham:** Let me take you back to where we were when we thought we had an agreement in 2008. That was that each scheme, at that point, had a triennial review, which allowed, in bilateral negotiations, for each scheme to work out the cap and collar arrangements. Although our members may not have been happy, back in 2008, to accept the changes that were made, they were, nevertheless, agreed scheme changes. We never got to the point of being able to take forward those negotiations because, by the time we got to the next triennial —
797. **Mr Mitchel McLaughlin:** They shifted the goalposts. I know that. That will probably continue, will it not?
798. **Mr Graham:** Yes. This is why I am very cynical about the 25-year guarantee. We have already seen the Treasury making changes to the discount rate and anticipated salaries. They have added 0.5% and raised it to 4.75% for salary increases, yet we hear that the Government is imposing public sector pay restraint and not just for the duration of this Parliament; it is being signalled to continue through and beyond the next. It is a bit bizarre that one side of the Treasury says that the public sector pay increase is going to have to be brought to 4.75% and then those who write George Osborne's speeches say that there is going to be no public sector pay growth, not even increments. It does not make sense.
799. **Mr Mitchel McLaughlin:** The balls are in the air; I am just trying to get them down. *[Laughter.]*
800. **Mr Graham:** The trade unions are usually accused of trying to keep the balls in the air.
801. **Mr Mitchel McLaughlin:** I would not say that you are not keeping the balls up in the air either, and I would not say that I do not understand that. We are trying to work this out in the best interests of our workers.
802. **Mr Graham:** I suppose it comes back to the data point. We are stumbling around in the dark as much as you, because we cannot get access to the data.
803. **Mr Mitchel McLaughlin:** There is the working longer review and all of that. There is probably a logic to what is going on from an ideological point of view if you are a Tory. You do the reviews afterwards. We will just try, if we can, to develop a position that the Executive will be prepared to put on the line and say, "Give us the information and the data; let people understand the implications". We would need to work with you on that, because they will simply play up the fact that there are at least three or four positions coming out of this region.
804. **Ms O'Donnell:** That goes back to the point that I made earlier in relation to linking the state pension age and the normal pension age and taking that as a broad sweep right across, without any consideration of the individual schemes and how they are currently different anyway. Also, as Bumper said, going

back to the negotiations of 2006-07, leading to the changes in 2008, there was an understanding that changes needed to be made at that stage. I think there is an understanding again that there are issues that have to be addressed. As Bumper said, we are not being given the data to enable us to see what those changes actually are. Also, if those broad brush changes go across the main Bill as well, we are not being given the opportunity to look at how they affect the individual schemes or to address those. Those are some of the main issues that we have in relation to it. It is taking away the facility to look at what is needed for each scheme and to address the issues that are there.

805. **Mr Mitchel McLaughlin:** Whatever about the benefits of reform — there may be benefits there — I think that, knowing what we have seen of this Government's approach, they do not intend to improve the situation. One of the earlier witnesses used the old expression about pensions as deferred salary. I think the Tories are taking that literally. They are just going to reduce the employers' contribution, and, if they have their way, it will be deferred salary only or as close as they can drive it to that point. We need to waken up to the scale of that assault, and I do not think we can afford to have all these individual positions.
806. **Mr O'Farrell:** There are two small aspects. The first point, which maybe Bumper could add more detail to, is to do with the process that we are going through now; namely, the formulation of the legislation itself and the fact that we lack the detail of it. For example, if we talk about one particular issue, which has come up several times this morning, namely the linkage to the state pension age, we do not know how much of the £300 million consists of that particular aspect of the state pension age. We do not know that scheme, let alone a broad overall figure. We simply do not know. That gives you of an example of the vacuum that we are dealing with.
807. There is a second aspect that is related to it and is worth pointing out. It is not just the rather irritating reminder in about every third paragraph of DFP's response that DFP has a clear function to safeguard public finances. We really did not know that, but thank you for the reminder. It is to do with DFP's attitude to negative resolution, which has been raised by us and also by the Human Rights Commission. There is something that I would like to know, just out of curiosity, from people who experience it; namely, you, as working MLAs. If legislation, regulations or directions come down from the Department, which is more likely to be seriously looked at more diligently by MLAs — something that requires positive resolution or something that requires negative resolution? My suspicion is that DFP wants a negative resolution process so that it can shovel through directions. We discovered only recently in our discussions with them that they have this extraordinary power of direction, which is like a self-appointed form of gold-plating. Essentially, they can just add on. The basis of it, as in their response to us on clause 28, just mentions in passing that the secondary legislation will be drafted to comply with the core provisions of the proposed Assembly Bill on the basis of the Executive's decision of 8 March 2012 to implement reforms in line with those for the equivalent schemes in Great Britain.
808. That assumes a huge amount of knowledge that was already there at the time. We know for a fact that we are talking about one piece of A4 paper, which was given to the Executive under the three-strikes-and-you-are-out rule on 8 March 2012. Again, that is why we cannot answer your question; we do not know what the answer is.
809. **Mr Graham:** There is one matter that we do have an answer on because we asked how much GAD charged for the two rather inept pieces of work. Did DFP consider spending £37,100 as safeguarding the public purse?
810. **Mr Mitchel McLaughlin:** Yes, although we may have some responsibility for that because we insisted that they came back with GAD.

811. **Mr Graham:** We rightly insisted, but did we get value for money out of £37,100?
812. **Mr Harry Baird (FDA):** Picking up on what Mitchel said about doing some work, the previous delegation said that you were still waiting on a response from DFP, but, of course, you got that in the past couple of days. That response is probably typical. We went away, spent some money and got a bit of work done, and it was basically rubbished. In our view, it was rubbished on wrong assumptions. They immediately latched on to the £300 million. That was totally wrong because, as John just said, nobody yet knows the cost of that specific aspect, in other words the state pension age. They used the £300 million just like that, as if it is gospel. It is plain what would happen if we were to get together to spend more, because that is an indication that there is basically no point. Minds are made up. That was like economist to economist. It is not a response that you would have expected. We certainly did not expect it. It was like two economists who will never agree.
813. **Mr Mitchel McLaughlin:** I do not think that anybody is giving any great credibility to those assumptions and careless, throwaway sums. They are just trying to intimidate people. At the end of the day, however, we still have to square the circle. If there are penalties, and I suspect that delay or even amending the Bill will have a cost, that then throws up the question of which aspect of our spending programmes do we impact to pay for that. That is a serious challenge for MLAs.
814. **Mr O'Farrell:** Absolutely, but, to reiterate a point, if the Committee was inclined to accept that some amendments suggested by the trade union side are worthy of consideration, it may be useful to have a breakdown clause by clause. If the Committee recommends a particular amendment for a particular clause, what will be the cost of that rather than some general ballpark figure?
815. **Mr Graham:** Quite a number of the amendments have no cost if you take

the power-grab approach of DFP, sucking into its area of responsibility stuff that is the legitimate responsibility of other Departments, such as the Department of the Environment.

816. **Mr Mitchel McLaughlin:** One aspect that would make that attractive to me would be if we could get much more focussed costs, even incrementally. They would not be estimates but costs, because you would be dealing with aspects of the scheme. It is really in our joint interests here to figure out how we can resolve the issue of the cost penalty and see what the actual figure is. People can then make judgements about whether we can afford to do this or not.
817. I have to run, I am sorry. I am 15 minutes late for another meeting.
818. **The Chairperson:** OK, Bumper. Thank you all very much again.
819. **Mr Graham:** May I make a closing comment?
820. **The Chairperson:** Yes.
821. **Mr Graham:** My take on the discussions — “conversations” may be a better term — that we had with DFP officials and the nature of their written response to yourselves, is that they are really smarting that this did not just go through on the nod via legislative consent. As we said, this is a devolved matter, and it is quite legitimate for you to examine the issues in their totality and bring specific Northern Ireland considerations to the table. I am really annoyed at the dismissive approach that we get from DFP officials when we try to engage with them in the negotiation sessions.
822. **The Chairperson:** I welcome your contribution today, as well as those of the other trade unions. We now have firm proposals as well as an idea of the cost of some of them, which was missing. We very much welcome that and will discuss it further. We will probably also send you further questions.
823. **Mr Graham:** OK. Thank you.

## 9 October 2013

### Members present for all or part of the proceedings:

Mr Daithí McKay (Chairperson)  
 Mr Dominic Bradley (Deputy Chairperson)  
 Ms Megan Fearon  
 Mr Paul Girvan  
 Mr John McCallister  
 Mr Ian McCrea  
 Mr Mitchel McLaughlin  
 Mr Adrian McQuillan  
 Mr Peter Weir

### Witnesses:

Mr Justin McCamphill  
 Mr Seamus Searson      *NASUWT*  
 Mr Dave Wilkinson

824. **The Chairperson:** From the National Association of Schoolmasters Union of Women Teachers (NASUWT), I welcome Dave Wilkinson, the national negotiating official; Seamus Searson, the regional organiser; and Justin McCamphill, a serving teacher with the union.

825. Gentlemen, before we start, I think that you have suggested some eight amendments to the Bill. I wonder whether you could go through the Bill with members to ensure that there is clarity on what you want to change. Further to that, you may want to make some general comments to start with.

826. **Mr Justin McCamphill (NASUWT):** I am the Northern Ireland junior vice-president of the NASUWT, and I have with me Dave Wilkinson, our national negotiating official with responsibility for pensions, and Seamus Searson, our Northern Ireland organiser, who has been referred to in the documentation as representing someone else, but he is representing us here today. I will hand you over to Dave first.

827. **Mr Dave Wilkinson (NASUWT):** Thanks, Chair and members, for inviting us to present this evidence. We are more than happy to talk through the amendments. I was going to start off by responding

in part to the correspondence that you put on your website relating to the trade union submissions to the Committee for Finance and Personnel with the deadline of 30 August. I will focus on the key points and explain the purpose of the amendments that the NASUWT is asking the Committee to consider, and then my colleagues will come in and explain the perspective from the point of view of our Northern Ireland organiser and also a serving teacher and scheme member.

828. The amendments that we wish to see made to the Bill that will protect Northern Ireland teachers' pensions when the reformed teachers' pension scheme comes into operation will improve the governance of the teachers' pension scheme and other public service schemes and establish higher standards of democracy and accountability through the Northern Ireland Assembly and invite greater involvement of trade unions representing scheme members than is currently the case in the Bill.

829. I will comment on the correspondence from Judith Finlay to Shane McAteer, the Committee Clerk, on scheme-specific comments made by the trade unions. For clarity: our comments are not largely scheme-specific; we make very few scheme-specific comments. Our comments relate to the overarching legislation and the Bill. Features such as the equalisation of the Northern Ireland teachers' pension scheme normal pension age and state pension age, the process of annual revaluation of earnings and career average revalued earnings (CARE), the Department of Finance and Personnel (DFP) directions and valuation process and scheme governance through the pension board and the scheme advisory board are all in the Bill and will become legislation if the Bill is passed. Those features cannot be negotiated away through scheme-specific discussions, so I

- want to address issues to do with the architecture of the Bill.
830. I also want to address the response to the letter that the Department sent to the Northern Ireland Public Service Alliance (NIPSA) — I know that NIPSA will want to pick this up — relating to the Government Actuary's Department (GAD) costings of the penalisation to the block grant. We regard it as an utterly bizarre comment about the method of calculating the amount by which the block grant will be reduced in the event of failure to progress pensions reform: the comment is that that is "irrelevant" and that no response will be given to a request to outline the method. I would suggest that it is precisely the role of the Assembly and the Committee for Finance and Personnel to ensure that the people of Northern Ireland, including public service workers, are not the victims of back-of-a-fag-packet calculations by the Government Actuary's Department. Even allowing for that, the exact nature of the final calculated figure should not cloud the appalling nature of the pressure that the Treasury is bringing to bear on the people of Northern Ireland through its threat to reduce the block grant. Later in your response to the trade union submissions, you quote GAD's phrase "spurious accuracy" in respect of the block grant deduction figure. We have to make it clear that we see GAD's figure as spurious, as it is provided without justification and, therefore, cannot be subject to analysis. We ask you to treat it in the same way. I think that it is absolutely appalling that GAD has not been prepared to provide justification for what was, of course, a racking up of that figure to a £300 million deduction.
831. In the same way, the NASUWT regards the macroeconomic arguments against the increase in the pension age of public service workers among the most powerful for you. Given the high proportion of public service workers in Northern Ireland, which is incomparable with England, Wales and Scotland, the increase in the pension age could deepen the recession in Northern Ireland by keeping unemployment high for far longer than would otherwise be the case. The scandal of graduate teacher unemployment in Northern Ireland, which is far higher than in England, Wales and Scotland, would, therefore, continue. My colleague Seamus will go into that in more detail and explain the impact that the scandal of graduate unemployment has on Northern Ireland teachers.
832. The NASUWT considers that the Committee Stage should be further extended, if necessary, to ensure that Committees have an opportunity to scrutinise thoroughly the Department's strategic policy division's response to the Nevin Economic Research Institute paper. The explanation that is given in the correspondence of 23 September is that the strategic policy division has not had time to produce a response to that. We ask you to extend the Committee Stage further to allow that response to be properly scrutinised.
833. I will work through some of the clauses that you address in the correspondence of 23 September from the Department to the Committee. I will look at clause 3(5) first. We do not consider that it is sufficient for the Department simply to give consent. This relates to retrospective changes to public service pensions. We do not accept that it is sufficiently democratic and accountable for DFP and relevant Departments to fulfil such a decision-making role. That should lie with the Assembly. We consider that it is part of the democratic role of the Northern Ireland Assembly to do that.
834. As you will have picked up from our submissions, one of our biggest concerns is scheme governance. We consider that the representatives on pension boards and scheme advisory boards should not be left to the vagaries of scheme-specific discussions or be within the gift of successive Ministers of Education. That is leading to a disastrous situation in England and Wales, where the Secretary of State for Education, Michael Gove, is picking the overwhelming majority of members of



- those boards, with only two members out of 12 on the pension board being direct representatives of scheme members through the trade unions. At the moment, nobody on the scheme advisory board is a representative scheme member. Those boards will have a crucial role in determining the future of public service pensions should the cost cap ever be breached.
835. You raised other points in the correspondence of 23 September. The NASUWT cannot accept that it is in the interests of scheme members for defined contribution schemes to continue to be an option. The Department of Finance and Personnel's response to what the trade unions have had to say about clause 8(1) is that it will limit options to close down that option. From our perspective, these are clearly detrimental options that will deteriorate public service pensions. Therefore, we seek protection for scheme members by removing the possibility of those options being pursued in the future. That is also the case for clause 11(5). You have rejected the reasons for an amendment being made to that clause.
836. We accept that there is no intention on the part of the Northern Ireland Executive to provide an alternative to defined benefit schemes. However, the legislation allows for scheme designs to be varied to move away from those in the future, and the NASUWT seeks additional protections to ensure that that deterioration does not occur. Linked to that is our concern about the Department's response to the trade unions over the amendment to clause 21(1). That is at the heart of the NASUWT's disagreement with the lack of protection that the Bill affords to public service workers about future detrimental changes.
837. In our view, the negative resolution procedure in the Assembly does not afford an appropriate level of government scrutiny to ensure that proper consultation on scheme changes has been completed. There should always be a debate and a vote
- in the Assembly on further changes to public service workers' pensions. If the Assembly does not see that as its democratic role, our members and public service workers in Northern Ireland, including all teachers, are saying that they are being let down badly by the democratic process. We strongly support the Equality Commission's and the Human Rights Commission's concerns about those aspects of the Bill that permit retrospective application.
838. We find bizarre the departmental response to clause 8(5), stating that expanding the permitted range of scheme designs by regulations has no direct effect on the pensions that are actually provided. That makes no sense to us as a statement. Expanding the permitted range of scheme designs would clearly have a direct effect. It would be possible to have a scheme, for example, that worsens the accrual rate compared with the accrual rate that is currently on the table.
839. One of the most significant issues in the Bill — I am sure that you picked this up from our submissions — is the equalisation of teachers' normal pension age and the state pension age. The NASUWT is supportive of the aspirations of the Fire Brigades Union (FBU), which you just heard from, and the other uniformed services for a normal pension age of under 60 for those services. However, what I would say to you, Chair and Committee members, is that that makes the normal pension age of up to 68 for teachers even more unacceptable. At a recent meeting, for which I was present, one of our younger members said that she did not want to die at her desk. The ever-increasing teachers' pension age would be harmful not only to Northern Ireland teachers but to the education service in Northern Ireland. Justin, who is a serving Northern Ireland teacher, will explain the implications of that to you in greater detail.
840. On a couple of the other points that the Department responded to on your behalf, the NASUWT accepts that there will not be consultation with the pension

- boards and the scheme advisory boards on the initial valuations of the reformed public service schemes, because they will not have been brought into existence. Over the next few months, the initial consultation will take place on the directions for the valuation of the reformed public service schemes, including the Northern Ireland teachers' pension scheme. The valuation process involves several specific aspects: the DFP directions; the DFP regulations; and the scheme's specific assumptions on teacher mortality and behaviour around retirement. The NASUWT considers that all that — the DFP directions and regulations — should be subject to consultation with all trade unions, including the NASUWT, because they will set the employer cost cap and contribution rate, and determine, for example, the circumstances in which the cost cap could be breached, and teachers' pensions could be worsened in the future. As you will appreciate, the current legislation is that that would be done by negative resolution, not positive resolution. Hence our even greater concern that there should be full consultation on the DFP directions. That has happened in England, Wales and Scotland. The Treasury has consulted all trade unions that represent scheme members, and we expect DFP to do likewise and consult on the draft directions. The finalised directions should also be subject to a consultation process with all unions.
841. The Treasury, in fact, a couple of days ago, issued its finalised directions for public service schemes in England, Wales and Scotland, which are subject to that process of consultation with all unions. To enable fair deal to protect the pensions of public service workers who are outsourced, we strongly believe that the provisions should be included in the Bill and not simply in guidance from DFP or the Department of Education. I will give you a good example of why that should be the case. The new Treasury fair deal policy for England excludes workers in higher education and further education completely, because it classifies those sectors as being in the private sector. It includes a series of caveats and loopholes to allow outsourced employers to offer broadly comparable pension schemes or even to pay compensation as an alternative to the provision of a pension scheme. That is presumably because it is Treasury policy and guidance. It is your intention that DFP will issue similar policy and guidance. It is not an entitlement for public service workers entered into legislation.
842. I must say to you, as Committee members, and to you, Chairman, that the NASUWT's proposed amendments address all the above issues. They are, with one exception, amendments that would not permit the Treasury to implement its threat to reduce the block grant with any meaningful justification. Reduction could not be justified. At the moment, GAD is not offering any justification for its figures anyway. Even if it were to offer justification, the Treasury would not be able to reduce the block grant if the majority of our amendments were to be accepted by the Committee or Assembly.
843. I will be honest. There is an exception, with the amendment to the clause that equalises the teachers' pension age with the state pension age. There would obviously be a cost to that. However, this is absolutely crucial to our members' well-being and to the education service in Northern Ireland. That is why we make that request to you, that equalisation of the teachers' pension age with the state pension age does not occur.
844. **Mr Weir:** Have you calculated what that cost would be?
845. **Mr Wilkinson:** We have not. I am sorry. If GAD were to give us the basis of its calculations, we would be able to work that out through scrutinising them. It must, by definition, be less than the claimed penalisation that they would bring about as a result of the Northern Ireland teachers' pension scheme not being subject to the reforms that are proposed, which I think is £60 million. So it must, by definition, be less than that.

846. We can explain to you the actual losses that teachers would suffer in Northern Ireland from current pensions reform. Have a look at the supplementary submission. The Committee for Education asked for figures when the Irish National Teachers' Organisation (INTO) gave evidence a few weeks ago. The Committee said that it is all fine and dandy talking about how bad things are going to get, but it wanted to see what was meant by that. The information set out in the table is conditional on the Northern Ireland teachers' pension scheme having the same design as the schemes for England, Wales and Scotland. At the moment, the proposal from the Department of Education is that the scheme designs should be identical. Have a look at the supplementary evidence that was submitted at the end of September or in early October. There is a table that shows how the pensions of teachers reduce because of scheme reform. Effectively, it projects teachers with different career histories and ages into the future, on one basis — that scheme reform does not occur — and on another — that it does occur. The blue row shows the situation for teachers if scheme reform does not occur; the final red row shows the situation if it does occur. The green row shows the situation for teachers if scheme reform occurs, and they take their pension at the age of 60 or 65 with actuarial reduction.
847. The representatives of the Fire Brigades Union spoke about the reductions that their members will suffer if they take their pensions at the same age as they do now. The Treasury has admitted that it expects public service workers to do that. It does not expect them to work until they are 68 at all. In the case of the uniformed services, it expects them to work the additional years. They would then suffer an actuarial reduction, which the FBU explained as being around 40%. For teachers, that could be as high as 60%, if they have a normal pension age of 68 and take their pensions along the lines that teachers' behaviour in Northern Ireland demonstrates at present. The table demonstrates the impact.
848. I want to make some final points, which are political — for want of a better word — rather than the specifics of scheme reform. They relate to the opportunities that the Northern Ireland Assembly has to ensure that its people — the people of Northern Ireland, including public service workers — are treated with more fairness and justice than those in England, Wales and Scotland. From our perspective as a union, the people of Great Britain and, of course, Northern Ireland are in thrall to one of the most vicious and pernicious Governments that we have seen. You may not have seen the full impact of this over here, but, in England, they make a virtue of attacks on the poor and the vulnerable and on public service workers. They attack other groups as well, but those two groups are being attacked at the moment to whip up a mood of public hysteria against the poor and the vulnerable and against public service workers and their salaries and pensions.
849. We have spoken to our colleagues from Northern Ireland, and you have not had to endure what many people have to endure in England, such as the bedroom tax, for example, which in reforming welfare benefits costs more than it saves. In England, significant sections of society are being driven to despair by the actions of the Westminster coalition Government. It has a similar impact for you because we have the threat over the penalisation of the block grant. Attacks on the jobs, pay, conditions and pensions of public service workers do not have the same impact as attacks on the poor and the vulnerable, but, although it is lesser in some ways, it has a similar impact on jobs.
850. The Public Service Pensions Bill is being put through the Northern Ireland Assembly as a different piece of legislation from the Westminster Public Service Pensions Act, which is now in force across England, Wales and Scotland, so you have a beneficial opportunity not to replicate the hostility that the Westminster coalition

Government demonstrates towards sizeable sections of its population. There is no concept, as far as the Westminster Government is concerned, of the social good or the common good. It seeks to identify targets and to drive through detrimental policies that attack those targets. You have the opportunity to do better than that for public service workers who have dedicated their lives and careers to serving the people of Northern Ireland. Northern Ireland has a far higher number of public service workers than England, Wales and Scotland. They dedicate their lives to serving the public and they have a particular impact on the vulnerable. They provide services to everybody, but it is the poor and the vulnerable who need those services the most, and it is the poor and the vulnerable who benefit from them.

851. There is a great deal of talk about equity across Northern Ireland and England, Wales and Scotland, but there should be no equity of misery. The Assembly has an opportunity to deliver a better and fairer deal for public service workers on pension provision, pay and jobs — because it has an impact on jobs — than is being delivered for public service workers in England and Wales and, to a certain extent, Scotland. I will finish there and hand over to Seamus Searson, our Northern Ireland organiser. He will explain the impact that public service pension reform and teachers' pension reform is likely to have on graduate employment and on unemployment in Northern Ireland.
852. **The Chairperson:** Seamus, I do not want to cut you off, but we are tight for time.
853. **Mr Seamus Searson (NASUWT):** Do not worry; I will keep it short Good morning, everybody. I will not go through the bits that Dave has gone through; I will just put some information before you on the situation for teachers in Northern Ireland. The figures are based on General Teaching Council for Northern Ireland (GTCNI) figures of the number of teachers who are registered who want to teach in Northern Ireland. There are 27,610 teachers registered

with the GTCNI, which you have to be if you want to teach in Northern Ireland. Fewer than 20,000 of them are in work. That is what we face. Of that number, only 500 are still in some form of work over the age of 60, so a very small number of that age group is involved in teaching at the moment. We have had a situation where — and this is hidden among these figures — up to a few years ago, there was still early retirement available for teachers, and some teachers took advantage of that because of the situation at the time. In recent years, a large number of teachers have taken redundancy packages. In the past three or four years, 500 teachers were removed, and, this year, about 250 teachers have taken redundancy packages. The number who wanted redundancy was three times as many as those who got it, which is an important factor, and they were mostly in the age range of 55 to 60. Part of their reason, from my experience when I first came to Northern Ireland, is that many teachers were in their early 50s when they took the early retirement package and intended to go back into teaching and carry on, doing subbing work or whatever else it would have been.

854. Most teachers who took redundancy packages over the past three or four years say that they have done their time, are burnt out, cannot offer any more and just want to go. They are doing that long before the age of 60.
855. You are aware of the unemployment rate among newly qualified teachers (NQTs). We need newly qualified teachers. It is not easy to say that we will pull the plug and not train them. We need a constant flow of teachers to provide the service and increasing motivation throughout the system. We had an NQT seminar in the last week of August before schools went back. About 45 people attended the briefing only five of whom had permanent work, some of it maternity cover for a year.
856. The situation is drastic, and if we force teachers to work until they are 68 as a consequence of the Bill, it will get worse. The number of teachers starting

- to take a reduction in their pension to get away is also increasing. It was introduced in Northern Ireland in 2007 that teachers could take a reduced pension. The uptake in the first couple of years was low, but people are now looking at that as an option to get away from teaching. That is the situation that we face, and it will get only worse if these changes are introduced.
857. **The Chairperson:** You make pertinent points about the state pension age in clause 10(1)(a), which you propose to remove. The Committee has not focused much on that to date. Will you give us more background on the possible raising of the pension age to 67 or 68? Some figures that we looked at will be of concern to the general public, who may not be aware of the state pension age possibly being tied to whatever Westminster does in passing this legislation. What was the genesis of that?
858. **Mr Wilkinson:** As you are probably aware, there is already in legislation an increase in the state pension age over time to 68. The equalisation of the state pension age for men and women, which goes back several years prior to this government, did not result in a levelling downwards and an improvement. It resulted, of course, in the state pension age for women increasing to 65.
859. Many of us, if you are around my age anyway, will have been informed, possibly by letter, that our state pension age has increased from 65 to 66. The projection is for that to increase to 67 and, in time, to 68. That affects a significant cohort of teachers in their twenties, who have a pension age of 68.
860. In comments two or three weeks ago, Danny Alexander, the Treasury Minister, said that the Treasury considers that the increase in the state pension age has not gone far enough or fast enough. As a result — it is in the Pensions Bill that is going through Parliament and which applies to the whole of the UK, including Northern Ireland — governments will review the state pension age every five years. Therefore, we can, I am afraid, reasonably expect, depressing though it is, that the current situation of teachers in their twenties looking at a state pension age of 68 will be brought forward so that teachers older than that will be looking at that state pension age.
861. We support our colleagues in the Fire Brigades Union and the other uniformed services unions that a pension age of 60 is unrealistic for reasons to do with the physical demands of the job. Nevertheless, from our perspective we are looking at an equalisation of the state pension age and the normal pension age for teachers, which means that they will not be able to take their teachers' pension without reduction until they reach the state pension age. Therefore we are looking at a significant increase in the number of years that teachers have to work to take their pension. Even when they take it — as you can see from the table in our supplementary evidence, which is taken from the teachers' pension scheme website for England and Wales — those pension benefits are worse than they would have been under the current scheme anyway. That is the significance of it.
862. Justin will outline some of the issues for ordinary teachers, because, of course, ordinary teachers are more important than people like me who are union officials. Justin will outline the impact of that for serving teachers.
863. **The Chairperson:** Just before we bring you in, Justin, is there an acceptance of the 65 normal pension age (NPA)?
864. **Mr Wilkinson:** There is, from our perspective, an acceptance of the 65 NPA in the sense that we have a current scheme, post-2007, with a 65 NPA. We still want to be able to have discussions with the Department of Education and employers about how beneficial provision could be brought in to allow teachers to continue to retire at 60, but, in principle, there is an acceptance of the 65 NPA.
865. **Mr McCamphill:** I will give a personal perspective of what it is like in schools. I started my career in teaching with the

- promise of retirement at 60. Although many teachers do not think about a pension when they begin their career, it was something that I was well aware of. I have always looked on my pension as deferred salary. As a maths graduate who had many career options, I chose teaching, not for the salary or even the holidays — *[Laughter.]* — but for what I could offer to young people in helping them to develop their skills and knowledge. However, I am not a fool either. I would not have taken on a job if I could not earn a decent living from it. I chose the job that I wanted and agreed to be paid on the agreed pay scale, along with the terms and conditions, including the pension. However, like many other public servants, I am being given a massive pay cut, not only through increased contributions but through a deterioration in my deferred income from the pension if I chose to retire at the planned retirement age. As I am the sole breadwinner for my family, that pension will have to support both my wife and me in retirement. I hope that my two-year-old daughter realises that when she is twenty-one she will have a massive burden.
866. Teaching is a stressful job that most of us manage well, and some brave souls have managed it well into their 60s. I have never met one who was not a principal, but I believe that they are out there. My suspicion is that the UK Government, when they proposed the legislation that we are on the verge of agreeing to here, were aware that most teachers would quit long before 68. The consequence will be poverty pensions, particularly for those who feel that they cannot cope with the demands of the job in their mid-50s. I am not suggesting that those teachers are not capable of other work, but they are unlikely to get many other opportunities. Unfortunately, as we get older our health deteriorates, and, although some will muddle through, with frequent hospital appointments and periods of absence due to ill health, the effect on our schools will be disastrous. A school with a large number of ill teachers will find it hard to cope with those pressures. The Minister has taken positive steps to employ young teachers, and my own school is benefiting enormously from that scheme, but if there is no turnover in the workforce, what hope will there be for those young teachers in finding future employment?
867. I acknowledge that the pension scheme that I belong to is in some ways even better than your own. It is not the case, as many of the public believe, that politicians benefit from an over-generous scheme. However, there are one or two aspects of your scheme that we would like in our own. As MLAs, you get to choose your own trustees. Your scheme has a fixed retirement age of 65, which will not vary with the state retirement age. When, in 2009, your accrual rate changed to one fiftieth to one fortieth, we had a similar drop. It looks good from the outside, but when you look at the changes in the lump-sum benefit and the increase in the years worked, it looks less good.
868. Finally, if these changes happen, my service, up to whatever age I am in 2015, will be protected, but only if I retire at 60. If I choose to teach beyond 60, I cannot access that part of my pension, and that should be looked at.
869. **Mr D Bradley:** I declare an interest as a former teacher, a former member of the NASUWT and a current member of the Northern Ireland teachers' pension scheme. I will not be like Julius Caesar and turn my back on the latter and put my head in the clouds and scorn the base degrees by which I did ascend.
870. **Mr Weir:** Dominic, we all know what happened when Julius Caesar turned his back. *[Laughter.]*
871. **Mr D Bradley:** Seamus, you said that there are 500 teachers still in service over the age of 60. Most of the people who started with me in 1978 are either retired or are in management positions. How many of those 500 work in classrooms and how many in managerial positions?
872. **Mr Searson:** A good number of them will be in management positions and

- senior management positions, not in the classroom.
873. **Mr D Bradley:** When I was on the Education Committee, there were about 5,000-plus qualified teachers who had never been in full-time employment; you are telling me that that has increased to more than 7,000. If this scheme goes ahead, there will be an even bigger annual increase in that.
874. **Mr Searson:** It also does not include those who have crossed the water to get work. These are only the ones who are registered in Northern Ireland, so a good number will have gone across the sea.
875. **Mr D Bradley:** I find myself in agreement with most of the points that you have made. My experience is that when people who are involved in teaching, especially in the classroom rather than in management, reach age of about 55, they have probably done their best work. To ask them to work on for a further 13 years is absolutely crazy and unacceptable. From the point of view of teachers, this is an area of the Bill that we need to look at again, not only for the delivery of the service but to ensure that young teachers get the opportunity to teach and to be employed as teachers. Thanks very much for your presentation.
876. **Mr McCallister:** Thanks for the presentation. You said that you could be worse off than the Fire Service guys. They were talking about 40%, and you were talking about 60%. How did you arrive at that figure?
877. **Mr Wilkinson:** This is assuming that a teacher has a normal retirement age of 68 and goes at 55.
878. **Mr McCallister:** I do not know whether I have to declare an interest, but my wife is a teacher, not that I will probably benefit much from it.
879. **Mr Wilkinson:** This assumes that teachers have a normal retirement age of 68 and go at 55. In current schemes, the early retirement factor from 65 to 68 is 3% a year and then 5% a year from 55 to 65, which gives a 9% actuarial reduction from 68 to 65. Colleagues, the early retirement factors vary for actuarial reduction for teachers. They tend to be revalued every couple of years by the Government Actuary's Department, but they average about 5% reduction for each year that a teacher goes early. Therefore a teacher who takes their pension 13 years early, allowing for the 3% actuarial reduction factors from 65 to 68, will suffer a reduction in their pension of about 60%. It would be higher if there were not lower early retirement factors between 65 and 68.
880. **Mr McCallister:** What would be the reason for going earlier? Would it be ill health or stress?
881. **Mr Wilkinson:** Yes. At the moment, there is an ill health option, as there is in all public service schemes; there are ill health benefits that teachers can take. If they qualify for that, they will get their pension without actuarial reduction, in relation to what they have paid in, or they could get some form of enhancement. Alongside the Fire Brigades Union, we take the view that there is likely to be an increase in applications for ill health retirement, because of the later pension age. Many of the applications for ill health retirement, particularly those due to teachers breaking down on the job, tend to be from teachers who are getting close to the normal pension age. That in itself would have a cost impact on the scheme. The threshold for ill health benefits is demanding: you have to be permanently unfit to teach. It is often teachers who do not reach the threshold for ill health benefits who apply. They are simply unable to keep pace with the demands and stresses of the job, or they face redundancy. That is the reality. In England and Wales particularly we are seeing a significant attack on jobs. Teachers face redundancy in circumstances in which payments are not enhanced by employers. Therefore, in order to ensure that they have some income during the period of unemployment, they take any pension they can. Those are the circumstances.

882. **Mr McCallister:** Payments to their pension are enhanced by employers. Do you mean payments after they retire?

883. **Mr Wilkinson:** Seamus, I want to be confident that I am not getting this wrong: is there a facility in Northern Ireland to enhance pension benefits for teachers who are made redundant?

884. **Mr Searson:** There is not. The employer does not increase the pension contributions.

885. **Mr Wilkinson:** However, they pay a redundancy.

886. **Mr McCallister:** They pay a redundancy. It is like that redundancy scheme that we had — pay redundancy, and then your pension —

887. **Mr Searson:** Teachers who are made redundant in Northern Ireland just get redundancy pay. That is the end of the story.

888. **Mr McCallister:** They can claim their pension after —

889. **Mr Searson:** They can claim it at any point after that, yes.

890. **Mr Wilkinson:** They can claim their pension at any point over 55, but it would be actuarially reduced. The point about having the later pension age is that the actuarial reduction would be higher. At the moment, it is going to be up to five years' reduction for most teachers, so you are looking at a 25% reduction in the pension. Once public service reform goes through, you will be looking at teachers having to suffer a far higher reduction. It is then that you will be looking at up to 60% reductions. You will also be looking at the circumstance of poverty pensions, which Justin mentioned. I do not want to mislead you on this: there is a facility for employers to enhance pensions in the event of redundancy in England and Wales; in Northern Ireland, that does not occur.

891. **Mr Searson:** Legislation is still there, but it is not done, so it does not take place.

892. **Mr McCallister:** Those moves on the general age are affecting all of us. The projected retirement age of somebody of my age is 67. That is when I will be able to claim a state pension. Just in case you want to stand for office, I understand that they may change our pension scheme here as well. Thanks, Chairman.

893. **Mr Weir:** I think that it is already changed or is in the process of being changing.

894. **Mr Wilkinson:** We accept that there is that change, but we ask you to look at it in the round, particularly taking into account the wider economic picture. The level of teacher unemployment in Northern Ireland is scandalous; it is not comparable in the rest of the UK. In Scotland, teachers have a right to a job when they qualify; in England and Wales, there is still far lower unemployment than teacher unemployment. I taught in England for nearly 30 years; I was at one school in Derby for 25 years. A large number of young teachers started at the same time as me in 1987, well over half of whom were Irish. They came to teach in England. That reduced year on year as a result of increased job opportunities here and the improving economy in Ireland. Now, however, graduate teachers have to travel to England to seek work, and that is in an increasingly competitive job market, because jobs over there are going as well. Once you factor in forcing teachers to stay in the classroom for up to eight years longer, which reduces the number of vacancies available, it is a scandalous waste of all that training and enthusiasm that new young teachers bring to the profession. As Justin said, no teacher goes into the job to make money. You would perhaps set yourself up in England as a free school principal or you would try to set up an academy chain if you were going to do that, but most teachers do not do that. They go into it because they genuinely want to have a beneficial impact not just on the education of the young people they teach but on the whole of their lives. They want to create a better society through education and teaching. Much



of that is being lost in Northern Ireland because of the scandalously high levels of graduate unemployment, and it will be exacerbated by the reforms. I know that it was not you who have done it, but we are extremely concerned that the wider picture has not been taken into account.

895. **The Chairperson:** On the point of the newly qualified teachers, most young teachers I know are either in England or are working in a different post here somewhere; I know very few of them who actually went on to be teachers. As Seamus said, it is an extreme situation. Do have any figures for the amount of public money invested in training that is going to waste as a result of the situation and how that would be affected by a further blockage?

896. **Mr Wilkinson:** We could provide that. This is not an argument for cutting the training places available for teachers in Northern Ireland. It is one of the very positive aspects of Northern Ireland society that education and teaching are held in high regard. In England, barely a day goes by without teachers, alongside other public service workers, including nurses and all workers in the health service, being attacked, vilified and blamed for all the ills of society. Our members, particularly when they come to England to work, say that it is just not the same in Northern Ireland, where education is valued and there is still respect for teachers and public service workers. People are acting to deliver services to the public; they are not public service workers because they are some form of scrounger, which is what is presented over and over again in England, particularly, by the current Government. We would not want it to be an argument for cutting training places. You have a superb resource of expertise, and the vacancies should be there to allow Northern Ireland society to profit from it.

897. **The Chairperson:** Gentlemen, thank you very much.



# 16 October 2013

## Members present for all or part of the proceedings:

Mr Daithí McKay (Chairperson)  
 Mr Dominic Bradley (Deputy Chairperson)  
 Mr Leslie Cree  
 Ms Megan Fearon  
 Mr Paul Girvan  
 Mr John McCallister  
 Mr Mitchel McLaughlin  
 Mr Adrian McQuillan  
 Mr Peter Weir

## Witnesses:

Mr Andy Blake                      *British Medical*  
 Dr Paul Darragh                 *Association*

898. **The Chairperson:** I welcome Dr Paul Darragh, chairman of the NI council of the British Medical Association (BMA), and Andy Blake, the head of the pensions department. If it is OK with you, we will go straight into questions.

899. I want to flag up an issue in the paper that you submitted to the Committee on the career average revalued earnings (CARE) scheme. You said:

*"The NI Executive should commit to adopting a fairer approach by ensuring that subsequent regulations prescribe a much flatter structure for the NHS scheme contribution."*

900. Perhaps you could elaborate on that.

901. **Mr Andy Blake (British Medical Association):** Historically, the NHS pension scheme has been a final salary scheme. We accept that that gives better value to higher paid members of the scheme because there is an expectation that their salary will rise steadily throughout their career to its highest point at retirement; whereas, if you have a flatter earnings pattern throughout your career, a final salary scheme will be less beneficial. In a career average scheme, it is, essentially, worth the same to everyone, and therefore the steep tiering of contributions is not so justified.

902. **The Chairperson:** Are there any specific amendments that you would propose to the Bill having seen the Department's response to your written submission?

903. **Dr Paul Darragh (British Medical Association):** We list proposed amendments in our document. We want stronger amendments to curtail sweeping new powers that would allow successive Executives to make unilateral and retrospective changes to accrued benefits in public sector pension schemes. If those powers are enacted, they will completely undermine the guarantee that this is a settlement for a generation. It is supposed to last for 25 years. We have had experience of that, because we entered into negotiations in good faith in 2008. We were told at that time that the settlement would last for a generation, only to see it upturned within four years.

904. We also ask for assurances that the arrangements for the scheme will be robust and that the proposed arrangements will meet the requirements for effective governance. Specifically, we ask that

*"The Department of Finance and Personnel's control over valuations and over the employer cost cap must be tempered with requirements to consult more widely"*

and that

*"The NI Executive should commit to adopting a fairer approach in the new Career Average Revalued Earnings (CARE) scheme".*

905. Amendments to the Bill are needed to allow the Working Longer review to be completed because, as it is, it looks as though the Bill will be pushed through without consideration being given to its findings.

906. **The Chairperson:** I am looking at paragraph 7 of your submission, which raises a general point about clauses 4 to 6. Is there a particular issue

- with compliance with the Pensions Regulator?
907. **Mr Blake:** Sorry. Could you repeat the question?
908. **The Chairperson:** In paragraph 7 of your paper, there is reference to the Pensions Regulator.
909. **Mr Blake:** Yes. At the moment, in England and Wales, there is a governance group, and a technical advisory group below that. There are Northern Ireland and Scottish representatives on that committee, representing all three schemes. There is representation from employers, the Health Department and trade unions. We would like to see the continuation of that level of trade union/employee representation continue.
910. **The Chairperson:** Just to be clear, you want compliance with the Pensions Regulator to continue?
911. **Mr Blake:** Absolutely.
912. **Mr Girvan:** Thank you very much for coming along. On the career average issue, changes probably have to be made because it has been demonstrated that many people are promoted a year prior to retirement and therefore leave the job on a fairly enhanced salary scale. After just one year, they can reap the benefit in the pension because it is a final salary scheme. I wonder whether that has been the case in the medical profession. Has that been evident in the BMA? Have surveys of your profession picked that up?
913. **Mr Blake:** I cannot speak about the whole public sector, but, in the health service, there is internal governance to pick that sort of anomaly up. That is reported in the media quite often, in my experience, quite often in local government, but there are internal governance procedures in the health service that pick up that sort of spike to avoid any gaming of the system.
914. **Mr Girvan:** To be honest, I do not have the same faith in the governance within the health system.
915. **Mr Blake:** I am not saying that I have particular faith in it. I am simply stating that I am aware that it is there, on behalf of the Department.
916. **Mr Girvan:** If the proposed changes to the scheme go ahead, do you see many of your members wanting to opt out of it?
917. **Mr Blake:** The evidence that we have seen shows that quite a lot of people have already opted out. The BMA has carried out surveys of our members in the three schemes in England and Wales, Northern Ireland and Scotland, and it is evident that a lot of doctors have brought forward their retirement plans. Over the past 18 months to two years, we have seen a spike in attendance numbers at the pre-retirement seminars that we run.
918. **Mr Girvan:** Do you have a figure for the percentage of the overall numbers who have opted out?
919. **Mr Blake:** I cannot give you a definitive figure at this point.
920. **Dr Darragh:** Perhaps your question was geared towards whether this is still a beneficial scheme, compared with others. We are saying that people are voting with their feet and are leaving the scheme by retiring early.
921. **Mr Weir:** Are they switching to a different scheme though?
922. **Dr Darragh:** No. They are retiring early and leaving the health service. We have to deal with that, because it will have an effect on manpower. Several colleagues have told me privately that they are leaving early, and several have already left. I know that that is anecdotal evidence, and I do not have precise figures, but that is what I see on the ground.
923. **Mr Weir:** I appreciate the point that you make, but it is an answer to a different question. Paul asked whether people are switching to a different scheme.
924. **Mr Blake:** I do not understand what you mean by that.
925. **Mr Weir:** For example, are they seeking a different private pension provider?

- Retiring early is different from switching to a different scheme.
926. **Mr Blake:** No one would really consider switching from a public sector pension scheme to a personal pension because the employer does not pay anything into a personal pension.
927. **Mr Weir:** So the scheme, even as adjusted, is massively advantageous to your members?
928. **Mr Blake:** The scheme is better than that which is offered on a private basis, but not as good as the one that has been in place historically.
929. **Mr Weir:** We are dealing with a slightly different situation now. Realistically, using a final career salary as the basis of the scheme as opposed to career average earnings is simply not sustainable. I respectfully submit that senior doctors are paid a very large amount of money, and that perhaps makes the idea of promotion a moot point, because they do not need a promotion.
930. Paragraph 16 mentions “steep tiering”. Could you expand on the point about steep tiering being unjustified in a CARE scheme? How do you see that operating?
931. **Mr Blake:** As I said earlier, higher earners in any final salary scheme will always receive a proportionately higher benefit than someone with a flatter earnings structure over their career. It is completely different in a career average scheme because you are just pensioning income in year, and so you are accruing a percentage of your income in that year. Therefore, relatively speaking, you are getting the same value per pound as anyone else in the scheme, regardless of your earnings, because you are paying a percentage of your pay.
932. From next year, the highest earners in the NHS pension scheme would be paying 14.5%, compared with the lower earners, who would be paying, I think, around 6% or 6.5%. To extend the current steep tiering and carry it over into a situation where 75% of members of the NHS pension scheme are in a career average scheme is not, in our view, justifiable.
933. **Mr Weir:** If steep tiering were retained in the career average scheme, it would hit the higher earners a lot harder, effectively.
934. **Mr Blake:** It would mean —
935. **Mr Weir:** Or disproportionately.
936. **Mr Blake:** Yes. It would mean that they would pay disproportionately a good deal more than lower earners.
937. **Mr Weir:** Would that, therefore, disproportionately hit your members?
938. **Mr Blake:** I suggest that it would.
939. **Mr Weir:** OK. Thank you.
940. **The Chairperson:** In paragraphs 18 and 19 of your submission, which are about the Working Longer review, you recommend adopting a wait-and-see approach. Do you expect any particular recommendations to come out of that on the capping of the pension age?
941. **Mr Blake:** The Working Longer review has just closed its call for evidence. Organisations, stakeholders, individuals, employers, and so on, have had the opportunity to submit evidence to the review for consideration. We understand that the report of the Working Longer review is due in the next month or so.
942. **The Chairperson:** Do you have any expectation that it will come out with something that will back up your arguments?
943. **Mr Blake:** The point I would make about the Working Longer review is that it was set up to look at the effect of individuals who are employed in the public sector working longer. Therefore to bring in changes to pensions that include extending working life before that review has had an opportunity to make recommendations seems slightly illogical.
944. **Mr Mitchel McLaughlin:** It can be quite problematic to try to develop a case that is based on particular

- sectoral pressures and dynamics. I think that people generally recognise that there are very significant stresses and dynamics in the broad medical practising profession. You have already talked about the Working Longer review. Clearly, societal and demographic issues, such as people living longer, have impacts, not necessarily in labour market terms but in society, with people perhaps requiring more intensive medical support as they get older. To what extent would a medical workforce planning process inform or provide an evidence case for setting a specific retirement age that is different from the national pension levels?
945. **Dr Darragh:** We have always been pushing for more effective medical workforce planning in the Northern Ireland context. It has been a long time coming. We keep getting promises. We need that information if we are going to meet the rising demographic challenges that you mentioned, Mitchel. The increase in population and inversion of the age pyramid is a challenge that we really need to meet. Look at the evidence on linking the normal pension age to the state pension age, rising to 68 by 2046, with the exemption of firefighters, police and the armed forces — those working on the front line. You will have police and firefighters dealing with someone, then bringing them to a 68-year-old consultant in a casualty department with all the stresses associated with that.
946. You are probably aware of Sir Michael Marmot, who did a lot of work on health inequalities and how we can deal with the health service. He made a very good point when he asked Andrew Lansley whether he had considered what would happen to stress levels and sickness absence if the proposals were brought in. How would that be managed in the medical workforce? Traditionally, the medical workforce has been one that does not take a great deal of time off sick. That will change if you force people in a stressful situation to work even harder.
947. In 2010, the then Health Minister was approached by consultants from emergency departments who warned him of the catastrophe that was about to face us regarding staffing emergency departments. Since then, we have had pay freezes, there have been great changes in grants affecting young doctors so they are now graduating with enormous debt, they are facing a pension scheme that means that they will have to pay in more for longer to get less out when they retire at the age of 68, and we wonder why we are having a bit of a staffing crisis. It can only get worse.
948. **Mr Mitchel McLaughlin:** I suspect that that pretty well describes the situation, which I am convinced will develop. I am trying to build on the acceptance that there are exceptions for some front line services. The question is about how we provide convincing evidence that such an exception should be applied to the medical profession. There is a front line dimension.
949. My sense is that there is no political support for this, and I think that is predictable from the point of view of the approach of the Government at this stage. There is little that the Assembly can do about developing a bespoke approach, but I would certainly like to explore it. Are there any examples, even in international practice, that we can look at where this kind of process occurs? You would think that such evidence would be de rigueur, anyway, in planning for the future. If we were talking about a settlement, say for the next 25 years, we certainly should have a clear perspective regarding the trends and projections of the type of services that will need to be sustained in all circumstances over that period.
950. I think that we are operating pretty much blind — it would appear that Westminster is, too — when we consider the Working Longer review and the back-to-front approach. Is there anything that you could point us towards that would give us an argument, either internationally or whatever? Is any economic modelling being done on the workforce requirements of the medical profession?

951. **Mr Blake:** Perhaps this is an obvious point, but you mentioned that the budget for health is fixed, to an extent, and within that, you have essentially got an ageing workforce. Take the particular case of doctors. If you were expecting consultants and GPs to work longer, perhaps until 68, clearly they would be a lot more expensive to employ than junior doctors coming up through the ranks. This legislation would add to that cost by forcing people to work longer for economic reasons.
952. A line can be drawn in the sand regarding protected groups and their normal pension ages. We look across at the fire service and the police service and note that there are desk-bound employees with a protected normal pension age of 60, yet an A&E consultant in a busy hospital would be expected to work until age 68. That seems illogical.
953. **Mr Mitchel McLaughlin:** Yes. However, we have been told in evidence sessions that there is limited ability for those services to absorb that particular opportunity for, say, desk-bound activity, when you consider the fitness levels that are required for operational activity.
954. With regard to the medical profession, I, and, I suspect, a lot other people, would be looking at the number of consultants who manage to juggle their public health service role with a private consultancy practice. That also has to bring pressures. What I am particularly concerned about in this context is the numbers of people who, thinking about their own future, would opt for private practice rather than staying in the health service.
955. **Dr Darragh:** It is a worry, Mitchel. I have heard younger doctors saying, “Well, I will just go and do more private practice.” To be perfectly honest, I am a great believer in the NHS. I studied in Dublin. I came back to Northern Ireland because I believed in the NHS. I could have stayed down there and earned a lot more, but I believed in the NHS, in Northern Ireland and its people. I came back. What I see happening fills me with horror. We are working together and endeavouring to work with the Minister to implement Transforming Your Care for the betterment of the people of Northern Ireland. I see changes being made to the payment scheme for doctors that I think will act only to deter people from choosing and being retained in that career in future.
956. **Mr Mitchel McLaughlin:** I read your submission over the past number of days. To an extent, you almost have to dig into it to find that issue. You allude to that particular dynamic, but it seems to me that it is quite a strong issue that should have been explored more. Did you consider that as part of compiling the submission and decide against being explicit about the pressures that it would put upon the workforce?
957. **Dr Darragh:** I do not think that we have any exact evidence on the effect of shifting people into taking on more private practice work. All that I can do is repeat anecdotes that have been expressed to me in my normal working day. I do not know whether any work has been done on it.
958. **Mr Mitchel McLaughlin:** The point is that anecdotes do not really help the Committee, nor will they influence the Minister.
959. **Dr Darragh:** I understand that.
960. **Mr Blake:** The problem is that that sort of thing requires a great deal of supposition. However, if you look at data for the England and Wales NHS pension scheme, which I was looking at last week, you see that, at the top of the scale of higher earners’ contributions, there has been something like an 8% reduction in membership. That is significant because, essentially, in the pension scheme, the average contribution what they call the “yield” is 9.7%. So, some people pay one and a half times that and others pay significantly less. The important point to note is that higher earners essentially subsidise lower earners who pay lower contributions. So, when you have withdrawals of higher earners,

- that pushes up the requirement for contributions from the rest of the members. That is an example of something that we warned about prior to contributions being increased. At that time, it would not necessarily have been possible for us to say that x% of doctors, for example, will leave the NHS because of that, but this is a very similar example. So, unfortunately, I cannot give you any specific evidence as such because, as I say, it requires too much supposition. However, I think the example of higher contributions leading to withdrawal from the scheme is interesting.
961. **Mr Cree:** If you accept the premise that pensions are really deferred pay, is your main concern the tiering structure that is proposed in this career average scheme?
962. **Mr Blake:** I will be quite open and tell you that our main concern is the working longer aspect. BMA accepted, when normal pension age increased from 60 to 65 for new entrants and contributions increased by over 40% as part of the 2008 changes, that working longer was a reality. We accepted it at that point. As I say, it is 65 years of age for new entrants. The thing that particularly concerns us is the unfettered link to the state pension age. Not only has the normal pension age for the NHS pension scheme increased to 68 immediately for some people, it will go on increasing as state pension age increases. The current Westminster Government have applied, shall we say, a fast-track catch-up approach to state pension age. That is a separate argument, but it is a fact. It is not something that previous Governments looked at particularly. They have applied a fast-track catch-up approach to state pension age to reflect perceived improvements in mortality rates. So, it is the unfettered link to the state pension age that we are concerned about.
963. **Mr Cree:** That is your main concern.
964. **Mr Blake:** In reality, it is easy to see that, if we continue to go down that road, we are not very far away from doctors being expected to work until they are 70, 75 or, perhaps, 80.
965. Our second concern, as you mentioned, is the around tiered contributions. We accept that tiered contributions are fair. We accept that higher earners should pay more and that lower earners should be encouraged to join the scheme and to remain in it and that, generally speaking, good pension provision should be something that all members of the NHS, for example, should expect as a right. However, what we do not accept is the very high rate of tiered contributions in a career average scheme — we are no longer in a final salary environment — and also the disparity between the NHS and, for example, the Civil Service. You have got a situation whereby, from April 2014, the highest paid civil servants will pay almost half as much as the highest paid members of the scheme in the NHS, which simply does not seem fair.
966. **Dr Darragh:** To get the same benefit.
967. **Mr Blake:** Exactly, yes.
968. **Mr Cree:** You mention that members coming into the profession at the bottom end should be encouraged to join a scheme. Under the contract that exists, do they have the right to make their own provision?
969. **Mr Blake:** They do, but as I mentioned earlier, in reality, if you are offered access to a public sector pension or, indeed, any employer sponsored pension, you will not turn that down in favour of private provision.
970. **Mr Cree:** Because it is more advantageous.
971. **Mr Blake:** It is more advantageous because your employer pays into it. So, for example, if you worked for Tesco or Sainsbury's, it would, essentially, be foolish to waive access to their pension scheme, not just because the employer pays into it, but because personal pensions are something of a minefield, as you may be aware. Essentially, they rely on the ups and downs of the stock market, the prevailing rate of annuities



at retirement, and so on. So, there is simply no comparison between, as you say, making your own provision and an employer sponsored pension scheme. That is, of course, why auto-enrolment of employer pension schemes is being implemented as we speak.

972. **Mr Cree:** OK. Thank you for that.

973. **The Chairperson:** I just want to clarify an issue about clause 10. Obviously, you have concerns about the pension age being 68. We have asked some of the other unions this as well. Would you be satisfied if that was amended to still refer to 65 but left flexibility for further increases? You said that it was 65 for new entrants. Would you be happy for it to remain 65 with regard to clause 10(b)?

974. **Mr Blake:** We would. As I said, we accepted, as part of the 2008 changes, that the normal pension age had to increase, but we believe that 65 is a fair limit on that.

975. **The Chairperson:** Thank you very much, gentlemen.

976. **Dr Darragh:** I thank the Committee very much for inviting us to give evidence. We very much welcome this opportunity to present our case. I think that the deputy Clerk has our contact details. If you require any further information from us, we would be more than delighted to get it to you.

977. **The Chairperson:** Thank you.



# 16 October 2013

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 Mr Peter Weir

## Witnesses:

Ms Margaret Coyle  
 Mrs Grace Nesbitt  
 Mrs Blathnaid Smyth

*Department of Finance  
 and Personnel*

to the Committee, albeit some time ago. I can reissue that, if that would be helpful. We have what we call a schedule attached to our membership. Most of our membership for the principal Civil Service pension scheme is made up of civil servants. About 80% are civil servants, but around 15% or 20% are made up of various others, or what we term schedule 1 bodies. That includes some of the bodies that you have mentioned. They would be included automatically and be part of the reforms that we are rolling out. If it would be helpful, I can supply that list to the Committee again. Would that be helpful?

978. **The Chairperson:** I welcome the departmental officials. We are well ahead of time, so we have two hours in which to grill you today. *[Laughter.]* We are trying to get to the nub of some of these issues, and there are a lot of clauses to go through. We will go through the Bill clause by clause and take questions from members for clarification from the Department.
979. We will start with clause 1. A number of concerns and questions were raised by some of the unions with regard to different bodies, particularly the arm's-length bodies (ALB). Given the person specified in clause 1(2) and the definitions at Schedule 1 of the Bill, what provision exists to enable those ALBs to piggyback on the main schemes currently and to continue to do so in the new schemes? Invest NI is included in the principal Civil Service pension scheme, and the Tourist Board is included in the local government pension scheme. Is that provided for under clause 25?
980. **Mrs Grace Nesbitt (Department of Finance and Personnel):** Some of the bodies that you have talked about are members of the principal Civil Service pension scheme. I supplied information

981. **The Chairperson:** Yes.
982. **Mrs Nesbitt:** OK.
983. **The Chairperson:** Someone, I cannot remember who, made reference to clause 1(2)(c), which refers to local government workers, and thought that it would be better if it referred to “staff” instead of “workers”, in case people thought it was people who work for local government, rather than those employed by local government.
984. **Mrs G Nesbitt:** In my view, doing work as a contractor for local government does not make you a local government worker. It is something that we looked at quite carefully when we were drafting the Bill, and it is something that we will take further legal advice on. However, at this point in time, my view is that that term is entirely appropriate, not confusing and consistent with our approach in pensions legislation previously. We will take advice, and I will come back to the Committee on that. My initial view is that there is no issue.
985. **The Chairperson:** Are members content with clause 1?

*Members indicated assent.*

986. **The Chairperson:** No issues were raised with clause 2. Are members content with clause 2?

*Members indicated assent.*

987. **The Chairperson:** Clause 3(3)(c) states that scheme regulations may allow any person to exercise a discretion. Can you elaborate on that?

988. **Mrs G Nesbitt:** No, I will have to get back to the Committee to give you further information on that.

989. **The Chairperson:** NASUWT raised concerns about clause 3 (5), which states that:

*“Scheme regulations require the consent of the Department of Finance and Personnel before being made, unless they are to be made by that Department”.*

990. This is a recurring theme throughout the Bill; whether the Assembly should have some sort of say in some of those decisions.

991. **Ms Margaret Coyle (Department of Finance and Personnel):** It is all a requirement of the Superannuation Order 1972. The Department of Finance and Personnel (DFP) advocated that it has to approve the secondary legislation. The local government scheme was an exception to that. The Bill will formalise the scheme governance and cost control, and it is appropriate that DFP consent is required for all the schemes including the local government scheme. However, the point that must be made is that the local government scheme, as well as all the other schemes, will retain its responsibility for scheme-level discussions and consultations for employers and trade union side. That element has not gone, but the local government scheme will be included in the Bill under the responsibilities of the Department of Finance and Personnel.

992. **Mrs G Nesbitt:** You referred to the Assembly.

993. **The Chairperson:** Yes.

994. **Mrs G Nesbitt:** Our view is that the provision is adequate. That would be a matter for Ministers and would be a political decision, really, but this is how our pensions have been dealt with to date. Going back to the primary founding legislation for how pensions have been dealt with, that control has rested with the Department of Finance and Personnel, which would and will continue to consult on changes. Some of the issues that have come up have been questioning whether the Department will be consulting on valuations and directions, and yes, we will. We have not considered and will not propose any changes to that; it would be a matter for the Assembly.

995. I know Mr Weir wants to get in, but the intention is to wind back a little bit. The purpose behind all these reforms started by Lord Hutton under the Labour Government was to find a fair balance between the taxpayer, employer, citizen, however you want to describe that, and members of public service pension schemes. There are quite robust governance arrangements in there to ensure that that happens, with the intention, and I think that it is a laudable intention, of making public sector pensions fairer while also making them sustainable. There are quite a lot of controls already built in, but if a political decision was that this should be a matter for the Assembly, that would be a political decision.

996. **Mr Weir:** Thank you, Grace. What we are saying is that the current system of approval is being rolled forward. No particular change is being made to that with the one exception of the anomaly that is the local government side being brought into line with the remainder of the public sector.

997. **Mrs G Nesbitt:** Yes. The intention is to bring the local government scheme into line but also to make the whole governance and management around that a more robust system with the view of protecting — I make that argument as a public servant — and making public sector pensions sustainable for everybody, not just higher earners.

998. **Mr Mitchel McLaughlin:** Is there not an issue here in that the Department is seen as having to have an absolute control? I do not think that it is a sufficient response to the concerns that have been brought forward in evidence to say that that is the way it has always been done and that we are just going to iron out the anomaly of the local government schemes. We need to be able to look at the argument for the Department's position and an evidence-based rationale that shows that is the best way of doing it, or else you will have to give us a response that examines the merits and demerits of some democratic oversight team.
999. **Mrs G Nesbitt:** This is primary legislation, enabling legislation and framework legislation, and the fact that there are more robust and transparent measures in there should assure members. It still leaves discretion at ministerial level for each sector and each scheme to look at how they want to manage their scheme to relate to the concerns of their workforce. That is another safeguard. It is not that total and absolute power resides in the Department of Finance and Personnel; there are high-level parameters. I may wish that it did, but it does not. *[Laughter.]* I know that is what you were thinking.
1000. **Mr Mitchel McLaughlin:** You are trying to reassure me but I do not feel reassured. *[Laughter.]*
1001. **Mrs G Nesbitt:** I will maybe have to try harder or give you something in writing if that helps, Mr McLaughlin. It is important, wearing my Civil Service pension hat and not my wider public sector coordinating hat, that each scheme and each Minister has scope to look at how they want to manage their scheme.
1002. At the end of the day, what is a pension scheme about? To go back to real basics, it is about people paying something in and getting something out and being supported, as we have heard, by their employer. That is absolutely right, and that should continue. It is important that each sector has the scope, and we have given the Committee information on variances that each sector and each Minister can make to adjust to their workforce. It is enabling legislation, and there is a degree of discretion. It is not completely binding, and a 2% variance is permitted in the cost. So, I think it is reasonable. I will set out something in writing to maybe convince you a bit more because I do not think that I have done that.
1003. **Mr Mitchel McLaughlin:** You are so kind. Thank you.
1004. **Mrs Blathnaid Smyth (Department of Finance and Personnel):** DFP has a dual role, because we have a Treasury-like hat on and are safeguarding the purse strings, but we also have the wider public sector pensions policy. So, in checking and approving any scheme regulations, we ensure that they fall within the current wider public sector pensions policy.
1005. **Mr Mitchel McLaughlin:** Those same kinds of safeguards and information would inform the Assembly if it was given a role in moving forward. I accept that those are the functions, but that information can be applied in different ways.
1006. **Mrs G Nesbitt:** I suppose that it depends what the Assembly views as its role and what it wants to do business in. I would argue and contend that, because we are having our own primary legislation on pensions in Northern Ireland, this is the opportunity for the Assembly to look at the detail of that, become familiar with it and be assured, or otherwise, that that sets the right parameters and the right roles and responsibilities for the Department of Finance and Personnel, in its overall role, and with the Treasury role as well, which the Department has here. However, it must also have the balance right between discretion and what other Ministers and other schemes can do. I argue for both, and I do not think that there is a conflict between both.
1007. **Mr Cree:** Grace, I did not like your comment that the definition was putting

- something in and getting something out, because it matters to most people how much you put in and what you get out; it is an evaluation. I rather like the term “deferred pay”, because that is what it really is. Will we not fall between the proverbial umpteen stools here by leaving flexibility in and having different schemes, albeit that some of those differences are very small? Why does the Department not take the opportunity to rationalise those schemes?
1008. **Mrs G Nesbitt:** We have looked at the research by Lord Hutton and at what happened elsewhere. You could argue that we should have had a public sector pension scheme, and some thought that that was perhaps what Lord Hutton would do. As I said, it is important that schemes and workforces have flexibility to look at what they are doing. That is flexibility to a degree, because other high-level things will be constraining factors on them. We have got a balance and a reasonable way forward.
1009. Could we look, as some colleagues in Wales are, at having a public service pension scheme for everybody and re-baselining? I think that that is what we are tending towards, in a sense, but I think that it would be very dramatic and, potentially, very costly to the public purse to have a single public service pension scheme in Northern Ireland. I think that we have got a reasonable compromise here. We have some high level principles and approaches and a framework that are going to apply to all parts of the public sector —
1010. **Mr Cree:** What work have you done on deciding the costs that you refer to?
1011. **Mrs G Nesbitt:** I have not done any work on that, so I cannot give you any costs. However, I imagine that unless you had the baseline at the highest and the best scheme, you would have to buy people out, because, as you said, pension is deferred pay, so people will have accrued rights.
1012. One of the good things about this legislation, which has been honoured by Lord Hutton, is that there are significant transitional protections. As I have said, people who were 50 at April have a full 10 years, and there is a sliding scale of three and a half years before that. So, then there are the people who were 46 and a half at April. If you start looking at those sorts of things and start to make dramatic changes, those things tend to be costly. However, I have not done an exact piece of work on that, so I cannot give you a figure on it.
1013. **Ms Coyle:** You are certainly right; there are complexities in all of these variations in the scheme. However, that cannot be avoided, because we have to consider the accrued rights that members have gained to date, and they should not lose those accrued rights. You could have people with reserved rights, or whatever, and that is where the complications come in. It is not as straightforward as broadlining it and saying that we are going to have one scheme, because it would be detrimental to a lot of people who may have built up service within their schemes to date.
1014. **Mr Cree:** But you are tackling some major areas there that people are not happy about?
1015. **Mrs G Nesbitt:** Yes, we are.
1016. **Mr Cree:** You might have taken an opportunity to rationalise some of the smaller ones. Are new entrants to the Civil Service still joining the appropriate schemes?
1017. **Mrs G Nesbitt:** No. I will clarify that. I apologise if I have not made that clear. Going forward, new entrants to every scheme will be joining new, if I can term it as that, career average schemes.
1018. **Mr Cree:** I am talking about this point in time. If I want to join a particular Department, do I join that scheme?
1019. **Mrs G Nesbitt:** Yes. If you were joining the Civil Service now, you would not be able to avail yourself of a final salary pension scheme, because our regulations changed, as did other schemes, by and large, a few years ago. They changed around 2008. We already

- have had reform of public service pension schemes, with the move to career average from final salary for new joiners, and, as has been mentioned by some of the contributors this morning, the actual increase in retirement age from 60 to 65. So, this is not a leap with everybody having to work to 65 or 68, because new joiners are already having to work until 65.
1020. I can speak more authoritatively about the Civil Service, because I know that in more detail. A significant amount of people there, about one third, will be in the full 10 years' protection — we are all quite old, obviously — so they will be able to retire at 60. So, the impact on the economy that some of the other witnesses commented on is going to be delayed. It is not going to happen in 2015.
1021. **Mr Cree:** This is my final point, Chair. If you move all of that along, Grace, when will there be one scheme?
1022. **Mrs G Nesbitt:** There will be one scheme for the Civil Service in April 2015, but we must honour people's accrued rights, as I think it is right to do, so there will be people who will have transitional protection. That is going to take 14 and a half years to work out of the system. Each sector will have one scheme, but there will be people who will eventually retire or die —
1023. **Mr Cree:** Retire, hopefully.
1024. **Mrs G Nesbitt:** I was trying to avoid saying die. There will be other people who will be no longer active members of the scheme.
1025. **Mr Cree:** That is a good way of putting it. Thank you.
1026. **The Chairperson:** Clause 4 deals with the scheme manager. In what circumstances would it be necessary for the scheme manager to be different from the responsible authority?
1027. **Mrs G Nesbitt:** Again, I will come back to the Committee with something in writing. We have left that more as a permissive clause in that they may be the responsible authority. We have another two sessions scheduled with the Committee to go through the Bill clause by clause, so I can give you more information on that then.
1028. **The Chairperson:** Generally, how do clauses 4, 5, 6 and 7 compare to the existing arrangements?
1029. **Mrs G Nesbitt:** In general, they are more robust and transparent. I can provide you with more detail on that. That was one of the key recommendations in Lord Hutton's report, that we should have better governance arrangements for pensions. The reason for that is that we should be able to sustain public service pensions and better manage pension liability.
1030. **Mr Weir:** As we are on clause 5, I do not think that there has been a specific response to the Northern Ireland Local Government Association (NILGA) and the Northern Ireland Local Government Officers' Superannuation Committee (NILGOSC) in relation to clause 5(2). What is the Department's position with regard to that?
1031. **Mrs G Nesbitt:** We may change the wording. It says, "must provide for the appointment". We want to give flexibility and recognise that there are different arrangements for local government, without taking up too much of your time. On reflection, we may change that to "may". That would then mean that, in the secondary legislation, it will —
1032. **Mr Weir:** It will allow the scheme-specific type of thing.
1033. **Mrs G Nesbitt:** That was always our intention. We will reflect on that, get legal advice and possibly change that.
1034. **Ms Coyle:** NILGOSC requested that we change that from "must" to "may", and we saw no argument with it. An amendment will probably be made at Consideration Stage. It should not be a problem.
1035. **The Chairperson:** With regard to clause 7 (Scheme advisory board), if the scheme advisory board is to advise

- on the desirability of changes to the schemes, do you feel that there needs to be a degree of independence? How do you assure yourselves of that?
1036. **Ms Coyle:** Basically, clause 5 requires that the scheme provides a pension board; clause 7, that there is an advisory board. There should be no conflict of interest between the two. So, although there are certain concerns from local government that someone on the pensions board might also be on the advisory board, that should not be the case. There should be no conflict of interest. That is relatively clear.
1037. The other thing is that we have recently been speaking to the Pensions Regulator. The regulator is now in the process of preparing guidance and a code of practice on how the pensions board and the advisory board will apply. They will consult on this guidance in Northern Ireland as well. That will be an opportunity for any of the schemes which have certain issues, particularly in relation to health, as we saw this morning, and, potentially, local government, to get into the detail of that.
1038. Again, the secondary legislation process provides scope for the Departments to further refine the scheme level arrangements. That is something that they should not forget, because they can get into the minor issues and make slight amendments to suit their area, when it comes to the secondary legislation.
1039. **The Chairperson:** You are saying that, if the Pensions Regulator raises issues, you will address them?
1040. **Ms Coyle:** Yes. Where the regulator gives guidance, it should be adhered to. The schemes will all have a copy of the guidance and will be consulted on it. I would say that, once the Act has been passed, they will be consulted right away.
1041. **The Chairperson:** Are there any other points, members, up to clause 7?
1042. In regard to clause 8 (Types of scheme), what requirement is there for the provision in clause 8(1)(c), which enables the establishment of schemes other than “defined benefits” or “defined contributions schemes”? What does the word “other” mean there?
1043. **Mrs Smyth:** It is just written in that way because it would be inappropriate to limit the options available to current and future generations of public service workers by removing any flexibilities. There are currently defined benefits and defined contribution schemes.
1044. **Mrs G Nesbitt:** To put it in non-legal language, it is a catch-all clause, because the intention is that these reforms, and this framework, should apply to the public service.
1045. **Mrs Smyth:** It is expected that, for the foreseeable future, all defined benefit schemes will be career average schemes. The Bill makes provision to protect the career average scheme design so that it will last for 25 years.
1046. **Ms Coyle:** It applies enhanced processes for trade union side consultation and Assembly scrutiny if that is not the case. That is not to say that they can be applied without any consultation if they were to go beyond a career average revalued earnings (CARE) scheme design.
1047. **The Chairperson:** Some have raised concerns about clause 8(5). They wonder why it is negative resolution rather than affirmative resolution. That point has already been covered in an earlier discussion.
1048. Clause 9 concerns revaluation. Clause 9(2) states:  
*“The change in prices or earnings to be applied ... is to be such percentage increase or decrease as an order made by the Department of Finance and Personnel”.*
1049. Does there have to be any consultation, or should there be some reference to consultation?
1050. **Ms Coyle:** It would be a rare case, but affirmative procedure will apply if there is negative revaluation. It must be pointed out that, if there is any negative



- revaluation at any stage, which would be a very rare case, there will certainly be affirmative procedure in that type of scenario. For all other revaluations —
1051. **The Chairperson:** Where is that at?
1052. **Mrs G Nesbitt:** It is set out in clause 9(5)(a).
1053. **The Chairperson:** Why the difference? There is an affirmative procedure for a percentage decrease, but, in any other case, it is negative resolution.
1054. **Ms Coyle:** If it is not negative, it will obviously be positive for the member. It would not be appropriate to have to go through affirmative procedure in that scenario because, if it was negative procedure, it would certainly be discussed with the Assembly, but you would not probably have to go into the detail that you would if there was negative.
1055. **The Chairperson:** To be devil's advocate, if there is going to be an added cost, that would be in the Assembly's interest as well.
1056. **Mrs Smyth:** The negative procedure is considered to provide an appropriate degree of —
1057. **Ms Coyle:** Yes; it will be discussed at Assembly level.
1058. **Mrs Smyth:** It would be similar to the uprating of benefits in the social security administration.
1059. **Ms Coyle:** That is dealt with via negative resolution as well. It is aligning with the pension increase under —
1060. **Mrs Smyth:** Yes; under the Pensions Increase Act.
1061. **Mr Cree:** We can fix that.
1062. **The Chairperson:** Clause 9(6) states:  
*"For the purposes of subsection (1) any gap in the person's pensionable service which does not exceed 5 years is to be disregarded."*
1063. There were concerns about equality screening and the equality impact of the Bill. Some contributors argued that that would impact on women more than men given that there are gaps in the workplace due to five-year family breaks etc.
1064. **Mrs G Nesbitt:** Five years is the normal amount of time that is generally used for the specific issue that you have raised. That is the normal benchmark in other policies that I am aware of from employment legislation.
1065. **The Chairperson:** Have you sought any views on that from any particular groups?
1066. **Ms Coyle:** There are more females than males in the public services, but the reason for that was an external factor; it was not the make-up of how the public service pensions were set up. It was screened out for that reason. We will get you more detail on that, but I think that that was the initial thinking behind that.
1067. **The Chairperson:** Did you have any discussions with the likes of the Equality Commission about that?
1068. **Ms Coyle:** Yes. When we did the policy screening, the Equality Commission agreed with our decision on the screening out of it at that time.
1069. **The Chairperson:** Were you aware of any other concerns from any other groups?
1070. **Mrs G Nesbitt:** No. Nobody else raised any, to the best of my knowledge.
1071. **The Chairperson:** OK. Members, anything else on clause 9? We come to clause 10 on pension age.
1072. **Mr Girvan:** Chair, I appreciate that there is evidence here from a number of the unions in relation to pension age. One that is not included but was mentioned here this morning is the British Medical Association (BMA). I appreciate that we have had a strong lobby from the Fire Brigades Union (FBU). Should any Department wish to make any variance to this, it would have to absorb any local changes that it would make. Is that correct?
1073. **Mrs G Nesbitt:** Yes. It would have to absorb changes; that is the stance that we have had. Those changes could be absorbed in a number of ways. You may

or may not be familiar with the slightly different stance that was taken in Scotland for firefighters. If you have not already got it, I can provide you with the details of what Scotland is doing with regard to firefighters. Basically, Scotland is looking at the accrual rate, so that people can leave earlier and not take such a hit in their pension. In secondary legislation, sectors will have the scope to do that. If they do that within the overall cost envelope of their scheme, that is OK. However, if they exceed that and decide to have — if I could just describe it very simply — a more generous arrangement on any of the variances that they wish to make, the stance that we have taken, and which was advised by Minister Wilson in his time, is that those costs would have to be met by that sector. So, there is scope within the overall cost envelope to vary it. There is also scope to go outside it. That brings with it a consequence for the funding for that sector. So, to answer your question: yes.

1074. **Mr Girvan:** So, the protection of accrued rights is an issue. I am looking at what was presented this morning in relation to the BMA, where the proposal is to move from 65 to 68. If, for argument's sake, someone wished to take a reduction and take the three years, that could be a 5% reduction per year. Would that be the case?

1075. **Mrs G Nesbitt:** I do not have the detail of the health service pension scheme. In the Civil Service, that would be our reduction rate and what people would have to do.

1076. I will make a couple of general points about state pension age. As came out in the earlier session with the BMA, the retirement age for new workers to the public service has, over the past few years, increased in all sectors, generally from 60 to 65. For firefighters it increased from 55 to 60. I did give the dates of that to the Committee, and I can supply those again if you want. So, the increase in the age is not a new thing. I accept that linking most parts of the public service to state pension age is new. The reason for that was that

it was a key recommendation for cost management going forward. So, it goes back to the financial sustainability of the pension schemes. Schemes will have scope within that to make arrangements so that people can choose to retire earlier and still have a pension to live on — maybe not as full a pension as if they had worked longer. Also, because we have the transitional protection, people have time to look at that. The move to career average and the increase in state pension age is not actually going to come into effect for people for some years to come. We have talked about private sector pensions. People could decide to take out that. They could look at buying added years. There are lots of flexibilities there. When it comes to capability, if people are not capable of doing the job, we do have provision for early retirement and medical retirement. Those things can all be looked at. I know that, in certain sectors, there are concerns about capability for firefighters and health professionals, and various reviews are going on. Those things can inform scheme design and specific secondary legislation going forward. If necessary, changes can be made.

1077. **Mr Girvan:** I am happy enough with that.

1078. I have one other point that I would like clarification on from the Department's point of view. Mention was made this morning of making a higher percentage contribution for the same outputs as another scheme. Is that down to the scheme?

1079. **Mrs G Nesbitt:** Yes. It is down to the scheme, and Ministers for each scheme will have their own view on that. Again, if I just refer to the increased contributions that we are experiencing in public service pension schemes, one of the things which I would personally support is protecting those members who are lower paid. There was a tiered contribution for most of the schemes. Basically, people who are paid more pay more in contributions. I think that that is quite fair — not particularly fair, maybe, if you are one of those people who is paying more, but in the grand scheme of things, I think that it is fair

and reasonable. At the minute with our final salary pension scheme, lower-paid people are subsidising those who are higher paid. I think that we have got it the wrong way round with regard to fairness and how we manage our workforce.

1080. In going forward, yes — as someone said this morning — career average will level that out, in that the higher earners no longer have the huge advantage of their best last year and final salary with whatever may happen in your best last year out of three for your final salary. Therefore, it will level that out. It is a fairer system, particularly for those who do not have the opportunity or the scope, within their particular job or career, for advancement. It is really up to each sector to decide who pays. Should what you pay in be totally influenced by what you get out, or is it reasonable in a scheme design for those people who are paid more to pay more into the pension scheme to help other people in that particular workforce or sector who are less well paid? That is a matter for secondary legislation, but there is a fairness in tiered contributions.

1081. **The Chairperson:** Following on from Paul's point about age, obviously, there will be exceptional circumstances and early retirements, etc, which will be looked at individually.

1082. **Mrs G Nesbitt:** Yes.

1083. **The Chairperson:** However, there is not that degree of flexibility in the scheme. I do not see why there could not be more flexibility in the primary legislation regarding some of those issues so that there is that flexibility. There are a number of reports; the BMA raised the issue, and the FBU has also raised an issue about the report. That will factor into consideration of retirement age. I do not see why the flexibility — and the FBU has proposed an amendment for firefighters, which is reasonable, because it passes it down to the next level to be decided on. However, it is not saying that it should stay the same. I think that that would be a more common-sense approach, rather than

putting it in primary legislation that it must be 60.

1084. **Mrs G Nesbitt:** The difficulty is when you look at a particular workforce. I will touch on health first, but I will come back to the Fire Service. If we had flexibility for the health service pension scheme — I do not have the figures to hand, but I can get them if that would be helpful to the Committee. How many members of the health service pension scheme are doctors? How many of them work in A&E, or whatever situation? Are you going to say that, for the whole of the health service pension scheme — I am just trying to work through the logistics of this — there will be a reduced pension age, or are you going to say that this particular group of workers and not that particular group of workers will have a different age in the same pension scheme? That could be particularly divisive, and it would be difficult to make those rulings and those judgements. In the Civil Service pension scheme, we have prison officers, who would also contend — and evidence has been given — that they should have a different pension age. Again, that gets very difficult within a scheme, because we may have other members of our pension scheme, maybe even in our schedule 1 bodies that I alluded to earlier, who would say that a difference should be made for them. Therefore, if a particular sector wants to look at that, it is appropriate for them to do that in the secondary legislation.

1085. Lord Hutton looked long and hard at the pension age, and he made exceptions. His view is that those are the only exceptions. It could get really difficult to decide whether to have a different age for the whole of the health service scheme or just parts of the health service scheme, for some workers. With regard to firefighters, the pension age actually changed to 60 some time ago. These reforms are not increasing it to 60; it is staying at 60. There may or may not be scope in that workforce for them to manage that by not doing front line firefighting, if I can describe it like that. And if there is not, it is really for that

- workforce to look at and see how they want to ease the transition, if they find that their workforce is failing on their capability and fitness tests. I think that the parameters that we have set should stay.
1086. **The Chairperson:** The issue that I was focusing on was that of the firefighters, as opposed to the health service.
1087. **Mrs G Nesbitt:** OK. That came up earlier.
1088. **The Chairperson:** The difficulty for the Fire Service is that it has a lack of backroom staff. The police, obviously, have a much larger backroom staff, in terms of the percentage of its workforce. If a report comes out now and says that firefighters who are 60 and on the front line represent a percentage increase in the risk to the public, ultimately, we, as politicians, need to be in a position to respond to that. I do not think that this being in primary legislation gives us that assurance.
1089. **Ms Coyle:** Just on the point that Grace has made, as the firefighters stand at the moment, I understand that those who came in from 2006 — that date may not be exactly right — have a retirement age of 60. Prior to that, it was something like 55. Already, you have a discrepancy within the Fire Service as regards retirement age. So again, if this were in secondary legislation, and we were discussing and consulting on it, would we look at those who previously had the 55 retirement age, and say that we need to make some kind of commitment to those people, because their pension age was originally 55? We now have people who have had a retirement age of 60 since they came into the Fire Service. Do you degress with those and take them back to an earlier age? There are so many discrepancies within each scheme.
1090. **The Chairperson:** And there are discrepancies, and that is the status quo, but ultimately we will have to make a decision based on both public safety and the pension arrangements, so that is a difficulty.
1091. **Mrs G Nesbitt:** I was just checking my notes there. The retirement age for firefighters actually changed in April 2006, seven years ago. That was the view that was taken then, and implemented. Obviously, Lord Hutton looked at the various retirement ages that there were in each sector. If we are saying that, by and large, new entrants to the public sector who joined in two thousand and whatever could work a bit longer, then we have honoured those with that existing accrued right, I have said, in terms of having an earlier pension age, but it is difficult to argue that we should unwind and unpick that, where we have increased the pension age.
1092. For firefighters, the age is 60. We are not proposing to increase that more. For other public service workers, by and large, it is from 60 to 65. I accept that that will go up with the increase in state pension age as well. If we start going back, we are unpicking what has been done before.
1093. Yes, if there is compelling evidence, from someone living in Northern Ireland, to say that this needs to be looked at in terms of fire safety and how we deal with that, that is different. However, I am aware of no major outcry in 2006 when the age was increased to 60. I am not sure why we would unravel that now. It is being looked at. It will be reviewed, and that gives me assurance that, if there is a real issue there, we can look at it. There will be flexibility within the scheme to look at that and manage the scheme costs as well.
1094. **Mr McCallister:** On that, the big concern is really whether it will fit in secondary legislation or be left up to the individual scheme for firefighters. It was completely unclear as to whether, if a firefighter took early retirement, say at 57, his pension would be downgraded by three years, until he is 60, or, indeed, depending on his age, whether there was 67 retirement or 68. Will that be worked out by the individual scheme? Can we give them some comfort?
1095. **Mrs G Nesbitt:** This is primary legislation. I cannot emphasise that

- enough. So that would be very much a matter for each scheme to look at, as to how easy or comfortable they want to make it for people who, for whatever reason, are leaving a public service pension scheme early. They will be looking at how they can do that, in view of the needs of their workforce and what they are asking people to do, and also the overall cost and affordability of the scheme. So that is a matter for the secondary legislation for the scheme. I think that that is entirely appropriate.
1096. **Mr McCallister:** To leave it in that?
1097. **Mrs G Nesbitt:** To leave it in the primary legislation but to allow discretion for variances, which can be set out within the scheme-specific legislation, in response to the needs of the workforce or, indeed, reviewing that, as you say, as new research and new thinking come forward.
1098. **Ms Coyle:** That was a success story in Scotland in relation to the Fire Service, because they eked that out. Most of the schemes at the moment have between a 4% and 6% reduction per year. I know that this was debated at last week's evidence session, too. Potentially, you could have a scheme saying that 5% is too much and it will consider 3%. In this particular scenario, where those people are working —
1099. **Mr McCallister:** They were using 4% as an average, but they did not have an issue with the 4%. They certainly had a big issue if it was 4% to the state retirement age.
1100. **Mrs Smyth:** It would be normal retirement age for the scheme, which would be legislated for at 60.
1101. **Mr McCallister:** So you are saying that it would be 60?
1102. **Mrs G Nesbitt:** Firefighters are one of the groups that are an exception to linking scheme retirement age with state pension age. I think the thinking is that that will reach 68, but it could potentially increase. Firefighters are one of the exceptions, so the retirement age for firefighters will be 60. Obviously, people will have transitional protection arrangements. That goes without saying, as I explained earlier. Also, those people who were recruited after April 2006 will not actually see a change in their retirement age, because their retirement age will be 60, and they came in knowing that. Does that explain it?
1103. **Mr McCallister:** It is a point that was raised, and I think it would make a huge difference. So you are telling me that the retirement age would be 60. If someone took retirement at 58, it could be —
1104. **Ms Coyle:** It would be 3% per year up to the age of 60, not up to the age —
1105. **Mrs G Nesbitt:** Not up the age of 67 or 68.
1106. **Mr McCallister:** I think that will be of tremendous comfort to the Fire Brigades Union, because last week there was —
1107. **Mrs G Nesbitt:** I would have thought that they would have known that, actually.
1108. **Mr Weir:** On that specific point, I appreciate the answer. In many ways, the answers, then, are probably in Hansard, in that regard. I think it might be useful in dealing with John's point about giving that specific comfort if the Department was to formally produce a letter on that specific point to explain what the situation is. Then, when we are dealing with it in Consideration Stage, whether it is through the Chair or whatever, it may be useful for that to be read into the record.
1109. **Mrs G Nesbitt:** I am happy to take the point, and we will set that out.
1110. **Mr Weir:** That is OK. On a second, more general, point, I suppose what is being said is that, if there are those variations, it is probably best at a scheme-specific level on that side of things. Is the danger of naming particular groups or bodies on the face of it the concern from a practical point of view in terms of the complexity that it would engender into the legislation? To what extent is it also an issue of the law of unforeseen consequences in terms of any legal problems that may arise once you

start putting in particular provisions for particular bodies, particularly if you are differentiating on the face of primary legislation in terms of specific schemes, or whether you leave it open? Mention was made of the wider bit. To be fair, I probably have more sympathy with the situation of the firefighters than perhaps some of the other cases that have been presented to us.

1111. **Mr McCallister:** Very delicately put.

1112. **The Chairperson:** What ones are you talking about?

1113. **Mr Weir:** One wonders at the terrible problem of a lot of doctors suffering on £100,000 a year or more, but that is by the by. If you open up something on the face of primary legislation to try to cover specific situations, do you then get perhaps the other 96% of people on that specific scheme who are not covered by it taking some sort of court action and saying, "Well, actually, here is the same scheme on the face of the legislation; why am I not covered?" and trying to take legal action to open up the floodgates? Presumably it would be both those concerns, the practical and the legal.

1114. **Mrs G Nesbitt:** It would, absolutely. Without repeating what I have said, I think that what we have struck here is a fair balance between the broad parameters at one level and at the other level, at the secondary stage, giving Ministers responsible for each scheme for their sector the flexibility to respond to the needs of their workforce, whatever they are. Within that there are safeguards, like medical retirement or whatever.

1115. **Ms Coyle:** The NASUWT had issues with the age of retirement in its evidence session last week. That could go on; you could have certain groups of people in every one of the schemes coming and saying that they are unique in this particular area, so it would be a quagmire to try and put it into the Bill.

1116. **Mr Weir:** Perhaps contradictory concerns have been raised over this. Last week, there was a concern that

the impact on teachers would act as a blocking mechanism and that people would remain at the top end of things and young people would not get in. We then had evidence today from the BMA, which had the concern that too many people would opt for early retirement and get out, although curiously enough, that also seemed to get married in with consultants working to the age of 68, so people were both leaving early and staying too late simultaneously. I am not quite sure how that works.

1117. **Mrs G Nesbitt:** Obviously, people have personal choices to make, and being a member of a public service pension scheme gives you as an individual a fair degree of flexibility in when you want to retire.

1118. **Mr Weir:** Presumably nobody is compelled to take part in these pension schemes; they could opt out.

1119. **Mrs G Nesbitt:** Nobody is compelled to join our scheme. In other countries, you are compelled to join the scheme if you are a member of the public service, but we have not done that. If people do not want to pay in, they can leave. I can supply the Committee with evidence on opt-out rates if it would be helpful. I do not have that detail to hand today, but I can get it. We looked at opt-out rates, because it was one of the areas that we said that we would look at just generally going forward, with increased contributions. With year three of increased contributions scheduled to begin in April next year, the opt-out rate has been very low, and of those people who have opted out, very few said that they did so because of increased contributions. They tend to be younger people: perhaps it is their first job and they have just looked at the bottom line of their take-home pay and have not quite made an informed decision, but there has been no increase in opt-out rates because of increased contributions. I think that is because of the point that members have made, that public service pension schemes — even reformed ones — are still excellent pension schemes to be a member of, not least because of the governance

- around it, the confidence that you can have that it will actually pay out at the end of the day, and the employers' contribution, which is still going to be significant. If you would like more information on opt-outs, I can get it.
1120. **The Chairperson:** On that point, in terms of opt-outs but more so in terms of uptake, the pension age has changed for new entrants; it is now 65. Have there been any trends or any change in the uptake?
1121. **Mrs G Nesbitt:** No. The uptake is still very high.
1122. **The Chairperson:** Do you have any figures on that?
1123. **Mrs G Nesbitt:** I can get you some figures on that, but certainly in the case of the Civil Service, it is a few per cent of staff who are not members of the principal Civil Service pension scheme. It is in single figures.
1124. **The Chairperson:** Is that the same for all the different areas?
1125. **Mrs G Nesbitt:** I would need to check with other sectors, but I know that there has not been any increase in opt-outs from increased contributions. Well, it would be wrong to say "none", but very little — minimal amounts. However, I can get you more figures about opt-outs and the trends there.
1126. **Ms Coyle:** Paul made a point about concerns that there would be opt-outs because of the increased contributions and now the wider reform, but, to date, there does not seem to have been any sign of that.
1127. **Mr Girvan:** I have no concern about there being opt-outs; I was just wondering what the options were.
1128. **Ms Coyle:** Even though people are paying higher contributions, they still know that to stay in the scheme, even the 2015 scheme, is beneficial to them.
1129. **Mrs G Nesbitt:** Just to add to that; what I think has been helpful is that there have been changes in national insurance contributions, in tax bands and percentage tax paid, especially for lower-paid people. That has cushioned the increase in contributions, so people have been able to manage what they have to live on and still pay the increases in contributions. That is good, because we want people to stay in our pension scheme.
1130. **The Chairperson:** Just one final point regarding clause 10. Clause 10(1) (a) is quite conclusive in that it links a person's pension age to state pension age. There would be concerns if that could knock out any consultation of the local Executive or Assembly in regard to that, because Westminster could ultimately make a decision to put it up to 70 and, because that is a new clause, as you said, that age will automatically become 70. So, some flexibility in clause 10(1)(a), whereby it could be the state pension age or the pension age as applied through a certain scheme, might introduce a flexibility that would suit us as a devolved Assembly.
1131. **Mrs G Nesbitt:** It depends on how you define "suit". If you have the flexibility and we do not keep pace, we could vary — indeed, we could come back and change our primary legislation if the Assembly desired. If we change that, that will have a cost, which Treasury will expect us to pay. That would be the first point.
1132. On this specific issue, the Executive on, I think, 8 March 2012, made a decision and said specifically that they agreed that this would be the policy that would be adopted in Northern Ireland across the public service schemes. I can give you the wording of that decision if that would be helpful. This is already a matter that the Executive have considered and made a decision on the specific point about linking scheme pension age to state pension age.
1133. **The Chairperson:** The state pension age rising to 68, or the state pension age at 65?
1134. **Mrs G Nesbitt:** The state pension age would be rising, because the exact wording was that they would do and

- follow what happened in GB. Again, I can provide the Committee with that wording. So, the Executive would —
1135. **The Chairperson:** But nothing has happened yet with regard to the rise to 68.
1136. **Mrs G Nesbitt:** No, but the Executive made that decision in the knowledge that it would rise. It is common knowledge that state pension age will increase, so the Executive made that decision in that knowledge.
1137. **The Chairperson:** To 65?
1138. **Mrs G Nesbitt:** No, they knew that the state pension age would be increasing.
1139. **The Chairperson:** Members, any other questions on clause 10? Clause 11? With regard to clause 12, “Employer cost cap”, what rationale can the Department give for having the various powers of direction in regard to clause 12(3) and 12(4)? I think Hutton said that there would be a consultation process around the cost cap.
1140. **Ms Coyle:** Yes. There will certainly be a 12-week consultation on implementing the directions and employer cost cap. We have already issued the HMT directions to the trade unions — NICICTU — for them to have a look at and come back and comment on them. We will certainly be carrying out our own consultation with the unions here in Northern Ireland.
1141. **The Chairperson:** But that is not in the legislation, is it?
1142. **Mrs Smyth:** The legislation states that the directions should be developed in consultation with the Government Actuary, but it is not covered by the legislation that there will be consultation with the trade union side on that.
1143. **The Chairperson:** Could that be strengthened?
1144. **Mrs G Nesbitt:** Yes, we could consider that. That is certainly happening in GB, even though it is not in their legislation.
1145. **Mrs Smyth:** It would be seen as best practice.
1146. **Ms Coyle:** I think it is not quoted in the Bill because directions are outside the legislation, but we could take a look at that.
1147. **The Chairperson:** Any other points on clause 12? Clause 13 is “Employer contributions in funded schemes”. Clause 13(4) states:
- “Where an actuarial valuation ... has taken place, a person appointed by the responsible authority is to report on whether the ... aims are achieved”.*
1148. How do you ensure the independence of that person and that assessment?
1149. **Mrs G Nesbitt:** It would be understood that they obviously will be independent, because they will be appointed by the responsible authority, but we can consider enhancing that just to make that absolutely clear. I think it is operating from the premise that it is understood that people doing such work should not have a conflict of interest.
1150. **Mrs Smyth:** Clause 13(7) says that they should be “appropriately qualified.”
1151. **Mrs G Nesbitt:** Clause 13(7) gives further clarification on that:
- “The person appointed under subsection (4) must, in the view of the responsible authority, be appropriately qualified.”*
1152. **The Chairperson:** Are there any other comments on clause 13?
1153. Clause 13(6)(c) states:
- “the responsible authority may—*
- (i) require the scheme manager to report on progress in taking remedial steps;*
- (ii) direct the scheme manager to take such remedial steps as the responsible authority considers appropriate.”*
1154. Will that need to be amended to take account of circumstances in which the responsible authority is the scheme manager?
1155. **Mrs G Nesbitt:** We will consider that, because the whole intention is that there is robustness and no conflict of interest. So, I will reflect on that.



1156. **The Chairperson:** There are no questions on clauses 14 and 15. Clause 16 refers to the Department for Social Development (DSD). Why are the records kept at DSD, as opposed to DFP?
1157. **Mrs Smyth:** It is same as the Department for Work and Pensions (DWP), in that DSD is in charge of the disclosure rights.
1158. **The Chairperson:** There are no comments on clauses 17, 18, 19 and 20.
1159. Where clause 21 is concerned, the NASUWT said that this should probably go through the Assembly. Do you have a view on that? This is similar to a point that was raised earlier.
1160. **Mrs G Nesbitt:** We have covered those issues.
1161. **The Chairperson:** Is there nothing further to add?
1162. **Mrs G Nesbitt:** I cannot think of anything. I will try.
1163. **The Chairperson:** There are no comments on clause 22.
1164. Clause 23(2) states:  
*“the authority must first consult the persons specified in subsection (3) with a view to reaching agreement with them.”*
1165. **Mrs G Nesbitt:** It sounds familiar. [Laughter.] I refer you to an evidence session from about a year ago.
1166. **Mr Mitchel McLaughlin:** What does it mean in practice? We have heard the theory.
1167. **Mrs G Nesbitt:** We will soon find out. It means what it says: you will consult with a view to reaching agreement. To be absolutely clear: it does not mean that you are required to reach agreement. When we had this discussion previously, we could not agree, but we had a very useful meeting. It means that there is not a union veto; I suppose that is the best way to describe it. I think that it is appropriate that there is not a union veto. To be fair, if the union were here, it would probably say that it means that there is a management veto. Again, this is about managing the whole scheme, and I think that the right balance has been struck.
1168. **Ms Coyle:** We are required to report to the Assembly on our discussions.
1169. **Mrs G Nesbitt:** Yes, it is very similar to the issue that we dealt with before.
1170. **Mr Mitchel McLaughlin:** It sounded vaguely familiar.
1171. **The Chairperson:** How do you define the term “significant adverse effects”, which appears in clause 23(2)(a)?
1172. **Mrs G Nesbitt:** I am tempted to say, “Good question.” If we start trying to define that and put a form of words around it, it will get very difficult. We could just say, “an adverse effect”. I think that the word “significant” is there to show that we are talking not about a few pounds but something substantial. I have no further definition to give you.
1173. **Mr Girvan:** What is the definition of “substantial”?
1174. **Mrs G Nesbitt:** I have no further definition to give you. This has been through the legal drafters. I do not know how we can elaborate or clarify that any more, but I welcome all contributions.
1175. **Mr Girvan:** Significant or otherwise.
1176. **The Chairperson:** There are no comments on clauses 24 to 31.
1177. Clause 32(1) states:  
*“A public body pension scheme established before the coming into force of this section may include—”*
1178. It goes on to mention paragraphs (a) and (b). Is there a reason for the use of the word “may” rather than “must”?
1179. **Mrs G Nesbitt:** I am not sure; I will come back to you in writing on that.
1180. **The Chairperson:** There are no comments on clauses 33 to 37.
1181. I will move now to the schedules.
1182. **Mrs G Nesbitt:** Local government workers are defined in schedule 1.

- Hopefully, that will help with the point that came up.
1183. **The Chairperson:** The section in the explanatory and financial memorandum on schedule 9 describes the fair deal provisions on the principal Civil Service pension scheme. Does that fair deal policy apply to other main schemes?
1184. **Mrs Smyth:** Yes, fair deal will apply across all the schemes. It is slightly different for the local government scheme in that it followed the principles of it, but it will do its own consultation with trade unions on their plans for fair deal. However, the new fair deal policy will not come about in Northern Ireland until the Bill has received Royal Assent. Under the previous policy, people who transferred out of the public sector into the private sector were asked to have a pension scheme comparable to what they had. Under the new policy, they are allowed to stay in their existing public sector pension scheme. There is, therefore, more protection for them. Obviously, the longer that it takes us to get Royal Assent for the Bill, the more risk there is for anybody in the public sector who is moving or being required to move.
1185. **Mr Cree:** On that point, are you referring to a deferred pension situation?
1186. **Mrs Smyth:** No, it is current pension provision.
1187. **Mr Cree:** Are the employee and the employer contributing to it in the new arrangements?
1188. **Mrs G Nesbitt:** Yes.
1189. **Mr Cree:** So, it is continuing on; it is not a deferred pension. I suppose that I should know this, but do any of the schemes provide for additional voluntary contributions?
1190. **Mrs Smyth:** Do you mean current public sector pension schemes or new schemes after 2015?
1191. **Mr Cree:** Current ones.
1192. **Mrs Smyth:** Yes, there are.
1193. **Mr Cree:** Is it envisaged that that will carry on?
1194. **Ms Coyle:** I think so.
1195. **Mr Cree:** I do not think that it is mentioned anywhere. Is it?
1196. **Mrs G Nesbitt:** We will check on that. My understanding —
1197. **Ms Coyle:** I think that those provisions will continue on to the revised scheme.
1198. **Mrs G Nesbitt:** We will check that out for you.
1199. **Mr Cree:** The tax is paid anyway.
1200. **The Chairperson:** Members, are there any other general points?
1201. **Mr Cree:** No. Have a nice day.
1202. **Mr Mitchel McLaughlin:** I think that that was helpful.
1203. **Mrs G Nesbitt:** For a change. *[Laughter.]*
1204. **Mr Cree:** We will see you in court.
1205. **The Chairperson:** Just to add, Grace, we will be firing down about 100 questions for written answer.
1206. **Mrs G Nesbitt:** And you will need a response by noon the next day.
1207. **The Chairperson:** I will need a response by next week. Obviously, there is a tight timescale to stick to.
1208. **Mr Cree:** There is a lot of information coming in for 18 October. That is just a few days away.
1209. **The Chairperson:** When will the Committee receive a departmental response about the cost-benefit analysis of the non-alignment of the normal pension age (NPA) to the state pension age (SPA)?
1210. **Mrs G Nesbitt:** Our view is that that is not required. We have looked at that, and we got an estimate from the Government Actuary's Department (GAD) to undertake that work. The estimate, which does not mean the final bill, is £15,000 plus VAT. It could take three to four weeks. It will —

1211. **The Chairperson:** I am tempted to say that you could buy a few flagpoles for that.
1212. **Mr Weir:** An awful lot.
1213. **The Chairperson:** Do not get excited.
1214. **Mrs G Nesbitt:** I could not possibly comment on that.
1215. That will be based on the original work that the Government Actuary's Department conducted, which has not been totally accepted in some quarters. To be honest, I am reluctant to spend more public money on that. I think that we are focusing on the wrong issue and are looking at the cost of delay or the exact cost of not doing a particular thing. I think that that cost would be significant, and that was one of the reasons that Lord Hutton put that requirement in. As I said, it is also a decision that our Executive have made, and I cannot see any merit in commissioning that work. I think that our time and effort would be better spent looking at the details and the substance of the legislation. That is what we did this morning, and I think that that has been helpful. I know that it is difficult, but we should also try to get a better sense of and understanding about what can happen with the permissiveness from the primary legislation to the secondary legislation. I was going to say that I am not minded to do that, but I may be accused of quoting somebody else. However, my thinking is that we should not embark on that route. I do not think that it is the best use of public money, and I am also very conscious that the Executive have made that decision. I will not rehearse this, but we have been over the flexibilities that are in the secondary legislation to address that issue where there are particular concerns in a sector. If the Committee wishes —
1216. **The Chairperson:** Is that the only reason, or are you afraid of the answers that might come back?
1217. **Mrs G Nesbitt:** No, I am not afraid of the answer. I think that the answer with be another x amount of millions of pounds, and we will then end up debating the efficacy of the Government Actuary's Department doing it, whether they are independent and how robust its analysis was. I just think that that is taking us in the wrong direction, because I believe that we should be spending our time and effort looking at the substance.
1218. I am not sure whether the Committee has any money and wants to commission the Government Actuary's Department or whether the unions want to commission it and pay for it. Obviously, that is a matter for you to consider.
1219. **Mr Mitchel McLaughlin:** Now you are being provocative. *[Laughter.]*
1220. **Mrs G Nesbitt:** I am just giving you a helpful suggestion.
1221. **Ms Coyle:** A comment was made at last week's evidence session that we have already spent £37,000
1222. **The Chairperson:** We could extend your consultation period to carry that out if you wish.
1223. **Ms Coyle:** If we add another £15,000, I do not think that we are going to very popular. That would take us beyond £50,000.
1224. **Mrs G Nesbitt:** In all seriousness, there will be a cost to delay. I have a little aside, which I will give to lighten the moment. I was described by one of the contributors at an evidence session as a scratch on a phonographic record that causes the stylus to stay in the same groove and play the same words over and over again. That person thought that I was a stuck record. Maybe I should update that with, what is it — a stuck MP3 player or a CD player? The person was talking about my reference to the GAD cost of delay of £300 million a year.
1225. I had never actually heard this before, but as the old saying goes, "I will take all cuts as compliments." I consider it important to remind members of the consequences of delay. From my time in education, which was a long time ago, repetition was a really useful learning

- tool to deploy in helping people to retain information. *[Laughter.]*
1226. **Mr Mitchel McLaughlin:** That seems to prove his point.
1227. **Mrs G Nesbitt:** You all remember the £300 million, so you have all passed the exam today. We have had no senior moments today.
1228. **Mr Cree:** Is the £300 million still the same? Has it not changed today?
1229. **Mrs Smyth:** It has not changed today. However, we could arrange that.
1230. **Mrs G Nesbitt:** The union suggested that there could be a variation of £10 million for each scheme. I said that if it were helpful, I would present it as £250 million to £350 million, because there were five schemes.
1231. **Mr Cree:** So, are you saying that there is flexibility in it?
1232. **Mrs G Nesbitt:** Absolutely. There is built-in flexibility.
1233. **Mr Mitchel McLaughlin:** It sounds as though you are actually saying that there was a margin of error of around 25%. Guesstimating is not the best way to actually —
1234. **Mr Weir:** I think that the point, in many ways, is that, whether it is £250 million, £350 million or something in between, it is big money whatever way you do it.
1235. **Mr Mitchel McLaughlin:** That is why I am not digging holes about it. *[Laughter.]* I am not sure about the guesstimating approach. However, there is no question that there is a significant financial penalty.
1236. **Mrs G Nesbitt:** There is. We know that, if we can accept that, our efforts would be better spent actually looking at the detail of the legislation rather than spending more money to refine a guesstimate, estimate or whatever you want to term it — an assumption. Are there any other questions?
1237. **The Chairperson:** No. We will let you go early. We have only an hour and 15 minutes left.
1238. **Mrs G Nesbitt:** I will go back and do some more guesstimating, will I? Thank you for your time. I genuinely appreciate the Committee's efforts. I am conscious that we have given you an awful lot of information. Pensions is not the easiest subject to try to grapple with. We will pick up the points that were raised today and give you something back. If something is not clear — I am sure that it will not all be clear — we are obviously happy to come back. We are scheduled for another two sessions on 6 and 13 November to go through the clause-by-clause scrutiny. Thank you for your time today.
1239. **The Chairperson:** Thank you.

# 16 October 2013

## Members present for all or part of the proceedings:

Mr Daithí McKay (Chairperson)  
 Mr Dominic Bradley (Deputy Chairperson)  
 Mr Leslie Cree  
 Ms Megan Fearon  
 Mr Paul Girvan  
 Mr Mitchel McLaughlin  
 Mr Adrian McQuillan  
 Mr Peter Weir

## Witnesses:

Mr Paul MacFlynn                      *Nevin Economic  
 Research Institute*

1240. **The Chairperson:** I welcome Paul MacFlynn to the meeting. He is a researcher with the Nevin Institute. Paul, you are very welcome. I suggest that we go straight to questions because we have a busy agenda of evidence on the Bill.

1241. The Department has issued a response to your paper. It stated:

*“the Department accepts that pension reform could result in short term labour market impacts but supports what this paper recognises is the view of most economists that the labour market will adjust over time and that there is the potential for long term benefits to emerge.”*

1242. Do you have a view on that?

1243. **Mr Paul MacFlynn (Nevin Economic Research Institute):** Obviously, I looked closely at the Department’s response. It harks back to what is mentioned in the paper about the lump of labour fallacy, which basically explains that jobs being prolonged at one end does not lead to job losses at the other. It is an economic theory based on an optimised economic model that the economy can adjust to the increase in supply of workers: demand will increase, new jobs will be created, and those will fill the gap, as it were. In the paper, I was trying to make two points. The first is that that model represents an idealised economic situation. At present, we are

in what could be classed as a less than ideal labour market situation. Short-term frictional unemployment, which the Department concedes would arise from this policy, could be transformed into medium-term and long-term unemployment, given the situation that the labour market is in. Evidence from the UK in particular points out that the predictions about the economy being able to absorb extra labour supply are based on an assumption about how businesses will react to increases in labour supply. If anything, the experience of the labour market in the past number of years has shown that businesses do not react in that way immediately, or that there is some disconnect in how they are reacting to higher levels of unemployment. Therefore, there is reason to believe that frictional short-term unemployment could become extended.

1244. Secondly, we are not talking about the whole economy. We are talking about one particular section of the economy, namely the public sector. The Department’s response to the discussion paper highlighted that it was protecting front line services and the fact that doctors and nurses were not going to be hired. The point that I was trying to make was that the skill set and the career set within the two sectors are very different, so expecting the private sector to be able to adjust and create the type of opportunities that would be unavailable in the public sector owing to this policy is slightly misconceived.

1245. The Department highlighted the prospect of there being a long-term reconciliation of the disruption caused by this policy, but that could be in the very long term. If the Committee or representatives of the Department of Finance and Personnel are negotiating on the basis of this policy, those types of short-term impacts need to be factored into that calculation.

1246. **The Chairperson:** There is reference in your submission to the Martins and Novo research paper on Portugal. Can you elaborate on the equality impact of that?
1247. **Mr MacFlynn:** That was trying to demonstrate that a lot of the studies on the impacts of changing retirement ages have been based on broad measures such as the economy, the unemployment rate generally, and how they manage generally to adjust to broad macro changes. That research looked at a very specific set of female workers in Portugal and followed panel studies on a case-by-case basis. It found more significant impacts than the more general studies. When you are looking at something like public sector pension reform and, more specifically, workers who are not as mobile between different sectors of the economy, there is scope for the impacts to be slightly more acute than they would be if you look at the economy as a whole.
1248. **The Chairperson:** There is a criticism from the Department in the first paragraph of its response. It says that there is no consideration in the paper as to what the impact will be of not reforming pensions.
1249. **Mr MacFlynn:** Maybe it should have been set out at the start of my paper that I felt that the discussion note was aimed at highlighting the indirect economic impacts of the proposal that is being made. I assume that the £300 million figure has been estimated by the Westminster Government. Obviously, a £300 million cut would be far reaching and substantial. However, the aim of my discussion note was to set out the case that there are other impacts that are not being anticipated if the policy is implemented. That might give some balance to consideration of both scenarios.
1250. **The Chairperson:** Do Members have any questions?
1251. **Mr Mitchel McLaughlin:** You have picked up on the main issues. We are ahead of the curve on the review of longer working times, and people might wonder how a government could proceed while such a review is still being carried out. Have you factored that into your consideration?
1252. **Mr MacFlynn:** Not in this discussion paper. However, that could be brought into the analysis. We were looking at the policy as proposed.
1253. **The Chairperson:** There are no further questions. Paul, thank you very much.

# 16 October 2013

## Members present for all or part of the proceedings:

Mr Daithí McKay (Chairperson)  
 Mr Dominic Bradley (Deputy Chairperson)  
 Mr Leslie Cree  
 Ms Megan Fearon  
 Mr Paul Girvan  
 Mr John McCallister  
 Mr Mitchel McLaughlin  
 Mr Adrian McQuillan  
 Mr Peter Weir

## Witnesses:

|                       |                                     |
|-----------------------|-------------------------------------|
| Mr John Adams         | <i>Northern Ireland</i>             |
| Alderman Arnold Hatch | <i>Local Government Association</i> |

1254. **The Chairperson:** I welcome to the meeting John Adams and Alderman Arnold Hatch from NILGA. We will go straight to questions if that is OK with you. The Department responded to your written submission. Do you have any comment to make on that? Do you still have concerns about clauses 5 and 6? If so, have you any suggested amendments?

1255. **Alderman Arnold Hatch (Northern Ireland Local Government Association):** Yes, Chairman. Thank you very much for the opportunity to come to the Committee this morning. We want only to strengthen what we said. Our general position is that we support the continuation of quality pension provision for those working in the local government sector while balancing the need for such provision to be affordable in the long term. We looked at some figures for the level of funding that the pension funds require. In 2002-03, the level was £57 million; 10 years later, it is £201 million. There is onward upward pressure on local government to fund the scheme. As that percentage support increases, it obviously goes in the rates.

1256. Our specific concerns relate to clause 5(2), which seeks to specify the body

to act as the pension board for local government. It seems that that is unique to local government, and we wonder why that is. It potentially hinders improved governance by conflating the roles of a scheme administrator and the pension board. We suggest that those entities in the new government structures should have specified, distinct roles that should be transparently separated. We are not interested in any additional layers of bureaucracy. There is not any independent scrutiny role in the proposed one body system. We currently have the Northern Ireland Local Government Officers' Superannuation Committee (NILGOSC) scheme. We do not know how efficient that scheme is. We did some cursory examination, and we found that the cost per member is higher than in other public sector pension schemes, but nobody is scrutinising that. That is one of the reasons why we think that there should be two bodies, one of which would act as a pension board that scrutinises what is being done as far as the administration is concerned. Administration can get out of control very easily in the knowledge that councils are always going to fund it, whether or not the percentage goes up year on year. That is the main reason why we are suggesting that there should be two separate bodies. Maybe John wants to elaborate.

1257. **Mr John Adams (Northern Ireland Local Government Association):** I will develop that point a little further. We talk about these issues regularly with our colleagues in England and Wales. We got access to their submissions on the issues for the Westminster Bill. In fact, they probably put it stronger than we have. They suggested that it would be better if they insisted on the functions being undertaken by the scheme administrator on the one hand and the pensions board on the other being separate.

1258. The purpose of those roles in the new system is to improve governance. We do not think that those two distinct roles can be carried out by the same body at the same time and deliver that improved governance and transparency, which underpin the principles. We are very supportive of the principles of the governance arrangements set out in the Bill. The implementation in local government is the only scheme specifically named in the Bill. That is not the best way forward.
1259. **The Chairperson:** So, you are saying that there needs to be independence and separation. Is that the case that is developing in England, Scotland and Wales?
1260. **Mr Adams:** Yes; they are making exactly the same point.
1261. **The Chairperson:** OK. Have you had much engagement with the Department in that regard? What kind of feedback have you received?
1262. **Mr Adams:** No. We looked at its response to submissions, and we could not really find that issue being addressed in the Department of Finance and Personnel (DFP) response. It would probably be better left to scheme-specific discussions and legislation, and we could get into the detail of how that might work in the local government pension scheme with the Department of the Environment (DOE). We also submitted the same points to the Committee for the Environment.
1263. **Mr Weir:** Thank you, John and Arnold for your evidence. You mentioned the scheme-specific issue. I looked through the responses from DFP, and there does not appear to be a direct response, though I might have missed it. However, representatives from DFP are next, and they may address the issue. I am sure that I will get corrected if I have missed it.
1264. Do you feel that the scheme-specific issue could be properly dealt with through regulations, which would presumably be the DOE's responsibility? Mention has been made of the DFP response. Has there been any discussion with DOE about how it sees things operating, or whether it is sympathetic to the issues that you raised?
1265. **Mr Adams:** The DOE has acknowledged our response and said that it will respond to it in due course. We have not had that response as yet. We think that leaving it to the scheme-specific discussions would be a better solution than specifying that it must be a particular way in the central Public Service Pensions Bill.
1266. **Mr Weir:** OK. Could the concerns be addressed by regulations, or do you think that what is there would prevent that at present?
1267. **Mr Adams:** It would appear that the specification of it being a particular way would make it difficult to correct in scheme-specific discussions. That is why we are suggesting that clause 5(2) should be removed. It is the only explicit scheme that has a specific solution put into the Bill. We feel that that should be removed. The principles of the earlier clauses are all fine with regard to the government structure, but we would like to deal with that at scheme-specific level, because we feel that there are other solutions where that improved governance can take place. As Alderman Hatch rightly pointed out, we do not want to add additional levels of unnecessary bureaucracy.
1268. **Mr Weir:** I wonder, to some extent, whether the reference is a by-product. I know that, with the NILGOSC scheme, the DOE — I would not say jumped the gun — was more or less ahead of the rest of the public sector in dealing with this. NILGOSC and the DOE, via the previous Minister, moved ahead with this at an earlier stage. I wonder whether it is to try to cover that point. I am interested to hear what the Department has to say, and whether that issue needs further exploration.
1269. **Mr Cree:** You refer to the draft advisory board across England and Wales. Are you fully satisfied that that would work



in connection with the various Northern Ireland schemes?

1270. **Mr Adams:** We are talking specifically about the local government pension scheme. We believe, on balance, that there would be benefit in having the relevant Departments across the various jurisdictions receiving a similar suite of advice. We are not suggesting that every Department should have one single, narrow piece of advice on the various iterations of the local government pension scheme in Scotland, England, Wales and Northern Ireland. However, we think that there would be value in having a common framework of advice to prevent future issues arising between, for example, the Department for Communities and Local Government in England and the DOE in Northern Ireland. That would mean that they could not argue that they had received different advice. We feel that it would be simpler, and all the jurisdictions would have access to a common framework of advice. Although there will be different details in the different schemes, the core principles are the same. I feel that there may be some economy and avoidance of unnecessary complexity if everyone accessed the same mechanism.

1271. **Mr Cree:** How long has that board been in existence?

1272. **Mr Adams:** It is in shadow form. I understand that it has been in existence for about six months, and the Government are consulting on what its substantive structure and framework should be as part of the consultation that is, I think, just closing.

1273. **The Chairperson:** OK, gentlemen. Thank you very much.



## 23 October 2013

### 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 John McCallister  
 Mr Ian McCrea  
 Mr Mitchel McLaughlin  
 Mr Adrian McQuillan  
 Mr Peter Weir

### Witnesses:

Mr Stephen Ball *Department of Finance*  
 Ms Margaret Coyle *and Personnel*

1274. **The Chairperson:** Margaret and Stephen, you are very welcome. We will go straight to the table of issues, as we have a lot to get to on today's agenda.
1275. **Ms Margaret Coyle (Department of Finance and Personnel):** It might be useful at this stage to tell you about where we actually stand — what our position is at this time — in relation to the two documents that you issued to us. On the paper of 10 October, we have a submission with the Minister on the drafting issues that you referred to. What we can probably tell you is that we have not identified any issues in the paper that would require a departmental amendment to the Bill. However, we do draft the outline of the clauses that you raised in detail in that response document. Unfortunately, it is still with the Minister. The only reason I am saying that is that I do not know what detail you want to go into in relation to that letter of 10 October, because we have detailed our response in that paper. You may want to bear that in mind. In general terms, the response offers scope to the Committee to propose amendments on some of the technical aspects, because they will not have any impact on the policy carried through in the clauses.
1276. **The Chairperson:** Can you elaborate on that?
1277. **Ms Coyle:** We are not prepared at this stage to make a departmental amendment, but we will certainly consider any amendments that the Committee may want to bring forward. That is specifically in relation to your letter of 10 October on the drafting issues and technical aspects.
1278. Unfortunately, again, we cannot positively respond to any of the amendments that you have asked us to consider in your letter of 17 October, because that still sits with the Minister. What we can do is give you a steer as to what we will positively consider in relation to amendments.
1279. **The Chairperson:** Is there a backlog of correspondence with the Minister? There are a few delays in correspondence.
1280. **Ms Coyle:** I believe that there is.
1281. **The Chairperson:** When will that be ironed out?
1282. **Ms Coyle:** We have asked for those to be dealt with as soon as possible. It is our hope that he will come back to us relatively quickly. There is no reason why we cannot give you a written response to your letter of 16 or 17 October as well. Hopefully, at that stage, there will be confirmation of whether there will be a departmental amendment or whether we will be rejecting the ones that you have brought to our attention.
1283. **The Chairperson:** Margaret, do you want to take us through what you can?
1284. **Ms Coyle:** OK. The first one is the enabling Bill. There is really no drafting practice whenever you are presenting a Bill. As far as we are concerned, the guiding principles are set out in the clauses, so the Department is not prepared to change that and have an overview clause. Regarding the position

- of other schemes, I can tell you that a submission is with the Minister for the North/South scheme. The Department's intention is that the North/South scheme will be part of the Public Service Pensions Bill on 1 April 2015.
1285. The other two schemes that are referred to — Northern Ireland Water and Ulster Sheltered Employment — will decide to incorporate into either the main schemes or their own specific schemes. As we mentioned last week, there are issues in relation to them being funded schemes and the cost to them to close schemes. Potentially, although they will be part of the Public Service Pensions Bill, the timescale may be extended for those two bodies, as they are funded.
1286. **Mr Stephen Ball (Department of Finance and Personnel):** One of the other issues with clause 1 was a request for an amendment to insert “similar” to describe the relationship between schemes. We were unsure whether that would bring any benefit to the description. The accepted way that schemes are described is “other schemes”, and there would be differences in the way that calculations are made for a pension scheme, a compensation scheme and an ill-health scheme. Their purposes are different. We thought that “other” probably best describes that and “similar” would not really add a lot to define it.
1287. **Ms Coyle:** Replacing “local government workers”, then — again, this will be detailed in our response to your letter of 10 October.
1288. **Mr Ball:** Our feeling is that that is already defined in the Bill. Schedule 2 has a description of what each of those categories essentially means. It would be a function of secondary legislation for schemes to establish eligibility criteria, and where there may be groups within those groups, they would be defined at that stage. That negates the need to go back and change the primary legislation for a minor change that is more suited to being described in the regulations for the scheme.
1289. Similarly, there was a request to consider replacing “teachers” with “teachers in the public sector”. Again, the secondary legislation would normally define the status of those teachers. There is a provision in the Bill that allows schemes to extend their access now. That will, effectively, operate the fair deal policy when it takes effect. It does not rule out the fact that teachers might have a different status if there was some change in their employment status within the Department of Education. It really just facilitates that and leaves it for secondary legislation to clarify where needed.
1290. **Ms Coyle:** In relation to the retrospective provision and retrospective effect, a few issues were covered in your latest document — points 25, 26 and 27. I will try to cover that in its entirety. Clause 23 requires responsible authorities to consult, with the aim of reaching agreement on pension changes that would have retrospective effect. Where agreement may not be achievable, the clause provides for an effective trade union veto on the change where it would have “significant adverse effects”. Trade unions would also have representation on pensions boards, which would be involved in determining the significance of any adverse effect.
1291. That links up with retrospection. We talked last week about the definition of “significant adverse effects”, and it is very difficult to pin down. Different authorities may have different opinions on what they perceive to be a significant adverse effect. Indeed, they have the opportunity to exercise a discretion in that area.
1292. What we have to take into account is that the pension authority has an obligation to inform those affected, with an aim to reach an agreement. If an individual has a different viewpoint on the significance of an adjustment to their accrued rights, and believes that an authority has, for example, gone too far outside the parameters of what you would see as being a significant adverse effect, they have the right to judicial review. The Department's view is that

- pension authorities will not want those extreme measures to be exercised and will, therefore, attempt to resolve the issue prior to recourse to the courts. I know that it is a very discretionary area, but there are safeguards there so that, if it got to a point where you would see that as not being a significant adverse effect, but one person did perceive it as being significant, there are roads that you can go down in relation to judicial reviews or whatever if you wanted to take it further.
1293. **Mr Ball:** It leaves the way open for the significance of an effect to be discussed, especially in the pension boards. One piece of advice that we got on how we might define a significant effect is that, really, we cannot; it will have to be tested. A significant effect could be a significant effect, but it might be a small effect. It is a function of the pension boards to weigh the significance.
1294. **The Chairperson:** Have you considered any other safeguards on that clause?
1295. **Mr Ball:** On significant effect?
1296. **The Chairperson:** Yes.
1297. **Mr Ball:** I think that, if something is deemed to have a significant effect, we will require the consent of trade unions. We will have to place a report in the Assembly, and it will have to be made with a view to reaching an agreement. There is an Assembly scrutiny role there in that the report will have to determine how those discussions were carried out in varying what is significant in terms of a detriment to pension scheme members.
1298. **Mr Weir:** You may have covered this point while I was out of the room, but would that report contain guidance? If the Department ultimately has to take a decision as to whether something is significant or not, we are in a bit of a blank on that. Would the intention be to produce guidance as part of that report on how you would define “significant”?
1299. **Ms Coyle:** I think that there would have to be. If the Department was to say that it found something insignificant, it would have to justify why it thought that.
1300. **Mr Weir:** I appreciate that you are not in the position to agree on the hoof to something, but if, for example, without prejudicing the timescales, there was a requirement on the Department to produce that guidance, would that be something that you would look at reasonably favourably?
1301. **Ms Coyle:** Yes.
1302. **Mr Weir:** It is something that it would have to do anyway, so consequently —
1303. **Ms Coyle:** That is right. The report is definitely a requirement. The Department would have to lay a report if there was an agreement on what it identified as being significant or insignificant. It is a safeguard, and it has Assembly scrutiny.
1304. Clause 3 deals with the absolute rights to veto. I know that this has been brought up a few times, and it is a concern that the Committee has brought up before, but this is a standing convention. It is basically a normal constitutional principle or convention that DFP is tasked with to ensure propriety and regularity on behalf of the Assembly. The mechanism for doing that, particularly in this case, would be via the DFP approval role provided in the pensions Bill. Clause 3 contains additional provisions about how the power to make scheme regulations under the Bill can be used. I know that we covered some of this last week, but an example of legislation that requires explicit DFP approval is expenditure falling out of the Northern Ireland Consolidated Fund. It is because pensions are paid out of annually managed expenditure (AME), and it is cash drawn down from the Northern Ireland Consolidated Fund. It is probably the most important factor leading to greater scrutiny from DFP where it might not be in other cases and for other policies. That is the role that DFP has always played in determining consent in relation to, in this particular case, consenting legislation for the Bill.

1305. **Mr Ball:** There are impacts in the other clauses of the Bill that deal with new measures for scheme governance, cost-cap control and valuation generally. It is the Department's view that it would be important to have the consent of the Department to ensure that those procedures are being followed.
1306. **The Chairperson:** There has been the suggestion that the Assembly should have some sort of role with regards to clause 3 by one of the unions. Has that been considered at all?
1307. **Mr Ball:** On the making of scheme regulations generally?
1308. **The Chairperson:** Yes.
1309. **Mr Ball:** The scheme regulations will, under the Bill, be subject to the negative resolution procedure.
1310. **The Chairperson:** Where is that reference?
1311. **Mr Ball:** It is dealt with later in the Bill under Assembly control and procedure for making regulations — "Other procedure".
1312. **Ms Coyle:** It is in clause 24.
1313. **Mr Ball:** Clause 8 also sets out the types of schemes that can be made. It specifies that regulations made by the Department must be subject to the negative resolution procedure.
1314. **Ms Coyle:** Clause 24(2) states:  
*"Scheme regulations are subject to negative resolution in any other case."*
1315. That follows on from the retrospective provision.
1316. **Mr Ball:** It is not a departure from the normal approach under the Superannuation (Northern Ireland) Order 1972, under which most of the schemes were made. The accepted process is negative resolution.
1317. **The Chairperson:** We will come to that further down the line. Do you want to move on to the next one?
1318. **Ms Coyle:** View to allow "any person to exercise a discretion" — basically, departmental discretion is a common feature of existing pension scheme rules. It provides flexibility in the delivery of ancillary benefits and entitlements in respect of service given by scheme members. An example is death benefits, which are classed as discretionary in most schemes. It is a permissive provision that is beneficial to members in that such discretionary benefits are treated separately for purposes of taxation. Generally, inheritance tax does not normally apply in those cases.
1319. **Mr Ball:** One other example is the Civil Service scheme. There are no current compensation scheme arrangements for members of the new nuvos arrangement. Therefore, the Department would make an ex gratia payment. The discretion would enable it do to that until such time as the appropriate rules are in place.
1320. **Ms Coyle:** If you need more detail on discretion, we will follow that up in further correspondence. We do not see a requirement for the Department to consider an amendment to clarify the consequential amending provision. It does not apply in this. We cannot overturn the core requirements of the Bill.
1321. I think the next one is actually covered — to follow up on issues arising from clause 3 — because it was basically around the DFP consent. If you are happy enough, we will move on to the next one.
1322. **The Chairperson:** Yes.
1323. **Ms Coyle:** The BMA and effective governance — basically, as far as governance is concerned, it should be noted that the pensions board should have equal numbers of employer and employee representation. That covers the issues that it had about effective governance. That will obviously apply to all the schemes.
1324. **Mr Ball:** There was a related issue about circumstances in which the scheme manager may be different from the

responsible authority. For most of the existing schemes, there is a very strong link between the scheme management and the responsible authority. The responsible authority is the Department that makes the regulations. Some functions will be performed by the accounting officer and the scheme administrator. They will be recorded in the scheme's annual accounts. The only case in which there would not be such a direct link is the local government scheme, and I think there are historical reasons; the district councils had responsibility for those schemes. They have a more distinct role as the scheme manager, but there is still a very strong link between the two. There is nothing in the Bill that would take away from the responsible authority's control and influence on the pension boards.

1325. **Ms Coyle:** Most of the unfunded schemes have the dual responsibility. As Stephen rightly pointed out, local government is slightly different.
1326. Pensions board, then. Because we have answered that, do you want us to cover that again, Chairperson? I know the answers are —
1327. **Mr Ball:** The Department felt that it was unnecessary to name unions or groups of unions in the Bill, and that secondary legislation could address that. Again, that would be a usual function of secondary legislation rather than having to define it in primary legislation and going back and changing it. If there is a routine change in union representation or scheme management, they may change their own procedures, as they can.
1328. **Ms Coyle:** The NASUWT suggested that the rationale for this amendment was that the Department for Education's current proposal for England and Wales was that only two out of 12 representatives of the pension board of the teachers will be direct teacher union nominees. As Stephen said, they can determine that at scheme-level discussions. There is nothing to stop them from putting into their scheme regulations that, for example, there should be six employee representatives
- and six employers to keep a 50:50 balance. We would not be prepared to make any amendment to the Bill in relation to that. Most of the other points that they made can be covered in secondary legislation.
1329. On clause 5, what I can say is that this is something you brought up in your latest documentation. As I said, we still have to get confirmation from the Minister, but we will positively consider amending that one. That would probably be the best way of explaining that. As far as we are concerned, it is a non-contentious proposal, and it provides flexibility for NILGOSC to act as the pensions board if that is required, because they are slightly different here than in GB.
1330. We have already agreed that with local government officials through the pensions Bill working group. So we will certainly consider replacing “must” with “may” at clause 5(2). There may be a consequential amendment if there is a departmental amendment to that, but we will speak with the drafter about that and may have to amend clause 5(1). We will certainly let you have sight of that prior to it being tabled.
1331. **Mr Ball:** The next point was in relation to clause 5(3) on securing compliance with scheme regulations and pension boards. The Bill includes new powers for the pension regulator, and there will be a new code of practice. Under that code, the regulator will have its own powers to place fines or request amendments, so it will have a regulatory role with schemes in terms of their pension boards. It will extend into the actions taken by a pension board and scheme manager.
1332. One of the other questions was on the word “desirability”. We felt that that was purely descriptive. It would not add anything to change the terminology. The test of whether it was desirable would be whether they complied with the requirements of clauses 14 to 17, which deal with the pension regulator itself, and the clauses for the pension boards and their remit. We would

- not necessarily have a problem with changing “desirability” but it would not really serve a function because the regulation is included in other clauses and will be in scheme regulations.
1333. Also in connection with clause 5, there was an issue about replacing “satisfied from time to time” with a specified period. We took our guidance on that from the Interpretation Act (Northern Ireland) 1954. That would be a term used there and would allow scope for Departments to have their own guidance and procedures for when those checks would be made. The Interpretation Act would define the meaning and effect of “time to time” in the legislation.
1334. **The Chairperson:** “From time to time” could mean anything: how long is a piece of string?
1335. **Mr Mitchel McLaughlin:** Does it mean that you need not do it?
1336. **Mr Ball:** I think it gives scope for the Departments to make their procedures for assessing “time to time”, but we can certainly get you a formal definition of that in writing.
1337. **Mr Mitchel McLaughlin:** I can understand the logic in giving the Department the flexibility to do it, perhaps, sooner rather than later if it so deemed, but is there a need to specify the length of time by which it should actually exercise it?
1338. **Ms Coyle:** If there was a delay or a longer period of time was required? We can certainly check that out and come back to you on that.
1339. **Mr Mitchel McLaughlin:** It would probably be sensible to allow the management authority to just step in or review whenever it felt it necessary, but we should be able to couple that with a requirement to do it in a specified period that allows elasticity but certainty — an extended period of time but within which it must revisit.
1340. **Mr Ball:** Section 17 of the Interpretation Act (Northern Ireland) 1954 states:
- “Where an enactment confers a power or imposes a duty, the power may be exercised and the duty shall be performed from time to time, as occasion requires.”*
1341. I think the intention is that there will be a further definition of what that will be, but it will be in secondary legislation.
1342. **Mr Mitchel McLaughlin:** I would like to press that issue so that we specify a time while allowing the management authority to conduct its own review in circumstances that may arise.
1343. **Ms Coyle:** We will consider that issue and come back.
1344. **The Chairperson:** What about the point about a failure to declare a conflict of interest in 5(5)(a) and 5(5)(b)? Is there an amendment?
1345. **Ms Coyle:** There is guidance from the Pensions Regulator, and I know there are still discussions and consultations on that, but that clearly defines what a conflict of interest would be. I assume that it will be a requirement of any pension authority or responsible authority to make sure that there is no conflict of interest in those particular areas.
1346. **Mr Mitchel McLaughlin:** What would the sanctions be for failure to comply?
1347. **Mr Ball:** The Pensions Regulator would have the powers to hold people to account. In some cases they could bring them to court. In lesser cases they would impose fines or request a correction to be made.
1348. **Mr Mitchel McLaughlin:** Are we going to get a written response on that?
1349. **Mr Ball:** Yes.
1350. **Ms Coyle:** Do you want us to go into more detail on clause 7? I know that Stephen covered the whole issue of the pensions board and the scheme advisory board. What we can say is that it is defined in the Bill that there should be equal representation of employer and employee on the pensions board. It does not specify that for the scheme advisory board, but, again, I think that is something that they should be



- doing when it comes to the scheme's secondary legislation.
1351. Historically, in relation to scheme advisory boards, until recently we had a governance group that advised on scheme changes. We ensured that there was equal representation of employee and employers on that particular board. That is our understanding of what the scheme advisory board should entail as well, but, again, it could be specified in secondary legislation.
1352. **The Chairperson:** Why not specify it in the primary legislation?
1353. **Ms Coyle:** I can only assume that, because the pensions board has the higher authority, and you would have member representation on the pensions board, the ultimate decision would lie with the pensions board and the representations there. That is the assumption as to why it is not in the Bill for the advisory board. Again, it is something we can certainly consider and respond to. The next one is similar.
1354. **Mr Ball:** There is a query on Northern Ireland Local Government Association (NILGA) evidence regarding the appointment of scheme advisory boards in England and Wales and having them appointed in Northern Ireland also. We thought that the pension board provisions set out the high-level requirements. If schemes wanted to follow that road, they could perhaps address it in their own consultations with the trade union side and under secondary legislation. However, we thought that there might be a slight conflict in the devolved power there. It is not something that we want to include in the Bill.
1355. **Ms Coyle:** The next one relates to what Mitchel talked about, as far as the responsibility for timings are concerned. The expectation is that the pensions board will consult the scheme advisory board on the desirability of scheme changes when action for scheme changes is under consideration. Provision is made on a statutory basis that the information will be provided when requested and at the appropriate time. Therefore, we assume that the advisory boards would have the discretion to offer a view on the desirability of scheme changes as a matter of course at any time.
1356. The Bill permits scheme advisory boards to establish their own ways of working. So again, at the secondary legislation stage, we will determine what way to set up the scheme advisory board.
1357. **Mr Ball:** I think that the scenario for first considering scheme changes is when there is a pressure on the cost-cap mechanism, or where there is some overarching legislation with which schemes need to comply. In the past, the Civil Service scheme has dealt with anti-age discrimination legislation and civil partnership legislation. In that case, it would be desirable for the pensions advisory board to give us the information when it is requested; but it does not preclude them not doing it at some other time, when one of those issues does not arise. The intention is to ensure that it is provided when it is required.
1358. **Ms Coyle:** The final point is about this:  
*"in circumstances where no more than one of each exist".*
1359. That is where the board offers advice to the scheme manager. This is not likely to be the case in current Northern Ireland arrangements. Provision is made for the eventuality that there might be more than one manager, as is the case in the local government scheme, but we spoke to the local government officials, and they were content to retain that provision at the last working-group meeting. So that was their decision on that.
1360. **Mr Ball:** Clause 8 is about types of scheme. We provided a response to that. Do you want us to cover that again, or perhaps cover the areas for which we have not provided a response?
1361. **Ms Coyle:** We are aware that we are covering a lot of stuff that you will

- probably receive over the next day or two on these particular issues and in detail.
1362. **Mr Ball:** The next area regarding clause 8 that is not dealt with is on the National Association of Schoolmasters Union of Women Teachers (NASUWT) proposed amendment to remove paragraphs 8(1)(b) and (c). This goes to the heart of the Bill which is based on policy decisions for career average schemes. So we are not prepared to move on that.
1363. The next provision that we have a response on is in the same clause, at subsection (2). We have been asked to consider an amendment to insert the words “to any extent” after “benefit schemes”. Benefit schemes are defined at clause 33, so we thought it unnecessary to include it again. The actual wording is used there.
1364. **Ms Coyle:** We have covered 13, on expenses. The next one then is clause 9. Is that not right?
- “What is the Department’s view on an amendment to require the regulations to be made by affirmative rather than negative resolution, given that this goes to the heart of the Bill?”*
1365. **The Chairperson:** In terms of clause 8(5), the key issues paper asks:
- “What is the Department’s view on an amendment to require the regulations to be made by affirmative rather than negative resolution?”*
1366. **Mr Ball:** Our approach was that current practice is to use negative resolution. If there was an occasion to propose to change the type of scheme, that would engage the higher consultation. Later in the Bill there is a procedure for engaging in consultation where those protected elements would be challenged in a proposal. So the removal or replacement of the negative resolution would not necessarily have the effect of changing the type of scheme or the benefits that would be delivered anyway. It would only take you into a new arena, where you would be engaging in further enhanced consultation with unions. There would be a requirement to consult with an aim of reaching agreement and to lay a report for the consideration of the Assembly, which would come to you, and the negative resolution would apply. So it could be scrutinised and challenged in the Assembly if it was deemed necessary to do so.
1367. **Ms Coyle:** We are trying to get a balance. There are certainly issues that we believe are extremely important and should be subject to positive resolution, but if we started changing a lot of stuff from negative resolution to positive resolution, the Assembly could potentially be inundated with reports that it would have to look at in day-to-day business. It could actually leave the Assembly at a standstill if we were to have positive resolution for every aspect of it. There are certain issues on which we say that negative resolution has been practiced before and has worked. There is that element of scrutiny.
1368. **The Chairperson:** Obviously there are different clauses that refer to negative or affirmative resolution, but if there are any examples of past practice, and you are saying that there might be a great volume of resolutions coming forward, if we could have evidence of that we would be better placed to make a judgement in regard to those clauses.
1369. **Mr Weir:** In terms of negative resolution, sometimes people see a false dichotomy between the two. I know that there is a lot more time involved in affirmative resolution, but, presumably, the negative resolution still comes. The issue is that the particular Committee, or anybody who can pray against that, can force that into direct debate. So there is the opportunity for a trigger mechanism to ensure that there is a debate, and it would then require a vote of the Assembly under those circumstances anyway. The bigger difference is probably in the practicalities and the fact that there would be a guaranteed specific debate as opposed to a triggered one.
1370. **Ms Coyle:** For those reasons, we see negative resolution as being quite robust

in those particular areas, because that safeguard is there.

1371. **Mr Mitchel McLaughlin:** The background to pension reform in itself is against the successful Government challenge to the unions' veto on a whole range of national wage agreements and so on. Consequently, there is a concern that the duty to consult with a view to finding agreement does not actually provide any reassurance against the loss of that particular veto. It has happened, and things have moved on, but, in dealing with the pension schemes, there are huge concerns, and in my view they are exacerbated by that loss of the veto. So, I think that people are looking for the Assembly to have a direct involvement in the process and the regulations that will be used to manage this scheme, and I do not think that they will get that reassurance from the negative resolution process. Affirmative resolution means that, even at cross-party level, Members can stand up and have their say and can make representation, and they will certainly be lobbied. I accept the practicalities of what Peter has said about negative resolution, but we are also trying to deal with a very concerned public, particularly those who are looking at their pension arrangements. No matter how this is presented, they see this a negative development. They see a negative impact, and I am not sure that they will be impressed by the distinction that people will make between adverse effect and significant adverse effect if that goes to the court. So, they want to see their elected representatives taking a hand here.
1372. **Ms Coyle:** We appreciate that, Mitchel. We had this discussion when we were putting through the Superannuation Bill. The same issue arose in relation to the trade union veto. From the Department's perspective, we thought that the negative resolution procedure was still appropriate because, as Peter said, it can end up in the Assembly if, for example, an MLA wanted it to. It can be debated at the Committee, but, equally, you can have a separate issue where —

1373. **Mr Mitchel McLaughlin:** That is straightforward. I do not have any difficulty with that. I know that an individual Member can pray against it. I am talking about the discussions and negotiations before it reaches the Assembly, and I am talking about adding a bit of muscle to the process of seeking to find agreement.
1374. **Ms Coyle:** If there were to be a report, the Committee would look at it and ask how far people went in trying to reach that agreement. So, obviously, the report would have to be very detailed. Again, these are things to consider. The Committee can raise this in writing with us, and we will certainly consider it. I know where you are coming from, but I cannot see the Department moving on this particular issue, because it has always been thought that the negative resolution procedure is robust enough. You can certainly write to us about that, because it covers quite a few areas, and I think that those are the points that you are trying to make.
1375. **Mr Mitchel McLaughlin:** That is exactly the point that I am making.
1376. **Mr Ball:** A lot of these changes will be permissive and routine and for which negative resolution will suffice. There are some that may be more complicated and contentious, and the idea that we clarify that it is a means to reach an agreement and that there is a report to be laid for the attention of the Assembly is intended to strengthen the consultation and scrutiny processes there. There are areas in the Bill where affirmative resolution will apply, for example where there is a proposal for a retrospective change. I take your point, but it is a question of how far you want to apply it in every case.
1377. **Mr Mitchel McLaughlin:** This has been a long session, and we have still some work to do, so I do not want to drag it out too far. However, in the case that keeps recurring about the firefighters, there is the potential for a locally constructed agreement. Agreement can be reached at a regional level that allows for the process of early

- retirement in circumstances where there is an operational implication that needs must. They are concerned about whether they can design a scheme that they can sign up to, even if there would be an impact on their pension entitlements, and which we can sign up to. That, I think, requires an enhanced requirement to find agreement, because, otherwise, you could refer to the body of the law, the legislation and the negative resolution process in the Assembly, all of which may not allow those locally designed solutions to emerge because we are talking about an agreement between the authority and the union side.
1378. **Ms Coyle:** We would argue that those would be scheme-specific discussions and that those discussions would not be in the Bill.
1379. **Mr Mitchel McLaughlin:** I do not think that you would write it into the Bill, but, if you had a process that provided the maximum encouragement to find agreement on the management side, life could be easier all round. That is why I say that. I would not say that the power-tripping Departments would want to abuse the process, but I think that we need to be able to address these matters, particularly with a view to finding solutions to what are very difficult issues that an individual might face.
1380. **Mr Ball:** At the moment, there are discussions with fire services in Great Britain.
1381. **Mr Mitchel McLaughlin:** I am aware of all that. Our approach should take account of anything that emerges there. It looks as though certain flexibilities are starting to emerge. So, let us give ourselves as much scope as possible without inundating us with any more work; we are so busy. I know that you are concerned about us.
1382. **Ms Coyle:** Very much so. *[Laughter.]*
1383. **Mr Mitchel McLaughlin:** Thank you.
1384. **Ms Coyle:** We were asked for the Department's view on an amendment that would clarify that the revaluation is required at specified periods.
1385. **Mr Ball:** I think that that is one of the areas where there will be scope for schemes to determine how earnings or prices are used to revalue accrued benefits in service. In the case of firefighters, for example, they might choose to use earnings as a measure of revaluing, whereas the Civil Service scheme would use the consumer price index (CPI). The Department of Finance and Personnel would have a role in making orders to determine those, and they would be based on statistical figures, such as the published CPI and figures for earnings. DSD makes an order to revalue earnings for social security additional pensions, so the role would be similar. It is quite a formal procedure, whereby the Department of Finance and Personnel probably determines the indices but the individual Departments have scope in how it would be applied. There is a requirement that the Department make those orders annually. That is the procedure that will be used when they are applied.
1386. **Ms Coyle:** It is DSD and DWP.
1387. **Mr Ball:** Departments retain their own scope for how they revalue benefits. I think that that is the main message.
1388. There was an associated issue about circumstances when an order for revaluation would result in a decrease. However, that would happen on very rare occasions. I think that there was a negative revaluation in the pensions increase two years ago, but it was not applied. I will go back to the Assembly procedures. I think that this provision means that a negative resolution would apply in normal conditions, but an affirmative resolution would apply in a case in which there was a negative revaluation. So, it would come to the Assembly to determine whether that negative revaluation should be applied in the scheme.
1389. I think that the idea behind its being in the Bill is so that positive and negative revaluations can be tracked for the

- function and the cost cap. However, it would be a function of the resolution procedure to see whether a negative would be applied.
1390. There was also an issue on consultation on those orders. Our view is that they are routine orders that determine CPI rates and increases in earnings that would apply. The current practice is that there is no requirement for consultation in the parent legislation, which, I believe, is the Social Security Contributions and Benefits Act 1992, which DSD made. DFP would make a corresponding order for public service pensions. There is no formal requirement to consult, and the rationale is to give effect to financial matters that are related to public statistics. I do not know whether you want to do any more on that.
1391. Clause 10 relates to the link to pension age. The NASUWT visited that to consider removing the requirement for the link to state pension age. Again, that will be one of our core provisions in the Bill with the aim of reflecting the Hutton commission's recommendations and the Executive's agreement in March last year. Therefore, we would not consider amending that.
1392. **The Chairperson:** Is it still the Department's view that the Executive agreed to 68 as the age? Grace said in the previous session that the Executive agreed, in the full knowledge that this would change the state pension age to 68.
1393. **Ms Coyle:** It will change to 68 at some time. I think that it may happen in 2046 or something. It is way ahead, so it will —
1394. **The Chairperson:** You seem convinced that the entire Executive agreed that in full knowledge.
1395. **Mr Ball:** Their agreement was that it would reflect the state pension age, even if the state pension age is changed from the current age of 65. There are plans for it to increase.
1396. **The Chairperson:** So, it was 65.
1397. **Mr Ball:** The minimum age would be 65 or the actual existing pension age at any other time.
1398. **Ms Coyle:** Clause 10 specifies the age of 65 or state pension age to clarify that. There could be a variance in the state pension age. That is the case, even at the moment, because of aligning women with men for the state pension age. For some people, the state pension age is different, so it was just about giving that flexibility.
1399. **The Chairperson:** I just thought it strange at the time that the Executive agreed to 65, but it was the Department's view last week that, under that previous agreement, the age was 68.
1400. **Mr Ball:** I think that maybe our statement took account of the fact that it will be 68 in the future.
1401. **The Chairperson:** But the Executive have not agreed to 68.
1402. **Ms Coyle:** No; they agreed to the pension age, whatever that may be.
1403. **Mr Cree:** If it were 60, and a member of a scheme were unfit, would that result in a deferred pension situation, or would there be a medical termination?
1404. **Ms Coyle:** As far as I know, the ongoing discussions for firefighters are trying to determine what happens when someone is, for example, found to be unfit and cannot go on until they are aged 65 or the age for their state pension. They are considering the possibility of their going out on ill-health retirement. So, if they can determine that they are unfit because of their line of work — this is where it can get rather complex — I think that they are trying to agree as part and parcel of discussions at the minute that those people could go out on ill-health retirement. That would mean that they would get their full pension, because there would be no actuarial reduction on ill-health retirement.
1405. **Mr Cree:** So, does that mean that it is not a deferred pension situation?
1406. **Ms Coyle:** No. If they agreed that it happened because of ill health, and it was proved that the work that they did resulted in ill health, they would go out

- on an ill-health pension, which is paid straight away.
1407. **Mr Cree:** I used the word “unfit”, which is different from ill health.
1408. **Ms Coyle:** This is where the complexities come in. They have to be seen to be unfit for the work that they are doing as a result of the job that they did to date but not as a result of any external factors. So, that is where it can become complicated. However, if that is determined —
1409. **Mr Cree:** They would not be in ill health, then.
1410. **Mr Ball:** Each scheme will retain its capacity for ill-health provisions and actuarial reduction if someone decides to leave early. The only real situation where a deferred benefit situation arises is when someone resigns from service. If they do not stay on until pension age, they could resign on the benefits —
1411. **Mr Cree:** You could say that, if there were not jobs for unfit people to do, what is the logical outcome?
1412. **Mr Ball:** The logical outcome is that schemes should consider that in the regulations that are being put in place.
1413. **Mr Weir:** I know that discussions with firefighters are ongoing at a national level, and —
1414. **Ms Coyle:** That is right. That is taking in the whole macroeconomic situation and taking it a stage further. However, that is certainly something that they are considering, which would mean that firefighters would not have to actuarially reduce, even though they may be under the age of 60.
1415. **Mr Ball:** I think that they might be concentrating on fitness. One of the recent reports into pension age for firefighters recommended that there should be consistent fitness levels across all fire services. The current pension age for that scheme is 60. Although it is a related issue and there are impacts with age-related inability to reach the fitness, it is the determining factor. That report made recommendations for scope for the fire service schemes to provide early departure avenues for staff who did not meet the fitness levels. Some of the things that are being discussed in GB at the moment are actuarial reduction and minimising the effect of such a reduction.
1416. **Mr Cree:** So, does that mean that it is not resolved yet?
1417. **Mr Ball:** No. It is still being discussed.
1418. **Ms Coyle:** I think that there is a conference today at which attempts are being made to tease things out. I do not know any more details of it, though.
1419. **The Chairperson:** If a firefighter were to retire at 56, would they get the reduction applied from state pension age?
1420. **Ms Coyle:** So, do you mean if they retire on grounds not of ill health but were to retire early under actuarial reduction?
1421. **The Chairperson:** Yes, at 56.
1422. **Ms Coyle:** We touched on that last week. Their actuarial reduction would take them up to their normal pension age, which, under the Bill, would be 60. If there were, for example, a 3% reduction each year, you would be talking about 12% of a reduction to their pension. That is because it would be for the four years. I am not sure what their reduction is, but it would be for the four years from age 56 to 60.
1423. **Mr Mitchel McLaughlin:** Is that 3% only an indicative figure? It is not —
1424. **Ms Coyle:** It is only an indicative figure. I do not know what it is for —
1425. **Mr Mitchel McLaughlin:** You cannot rely on it.
1426. **Mr Weir:** We have heard suggestions that it is closer to 4% a year.
1427. **Ms Coyle:** The point that I am trying to make is that, whatever percentage it is a year, it will take them up only to their normal pension age, which is 60; it will not take them up to state pension age. The retirement age of 60 has been agreed for firefighters.

1428. **Mr Ball:** The next area for which we probably have not given a line before is clause 11, which concerns valuations. In its evidence, the BMA stated that DFP's powers of directions should be tempered by the requirement to consult wider than the Government Actuary's Department on the valuation direction. We have a paper with the Minister on that, so we hope to give you a written response very soon.
1429. **Ms Coyle:** We will positively consider that, which is probably the best way to put it. We have already discussed it with the collective consultation working group. We agreed to consult for 12 weeks on the directions for the valuations. Acceptance of the amendment would demonstrate a positive approach to consultation, so we see no issues with that. It is likely that we will consider tabling an amendment to clause 12 to that effect.
1430. **Mr Ball:** There is a requirement to consult with the Government Actuary's Department. That reflects that those directions are about dealing with finance procedures and how and when valuations are carried out. As Margaret said, we are talking to trade unions about consulting on the directions, because this is a new provision.
1431. **Ms Coyle:** That also relates to the employer cost cap. The intention is that we will consult for 12 weeks to cover the directions for valuations and those on the employer cost cap. So, it will be a joint consultation. We will consider an amendment to include that further provision in clause 12 so that the DFP regulations may be made only after the Department has consulted the relevant stakeholders. So, again, it is just to cover that there will be a consultation. We would certainly consider amending that clause to that effect.
1432. **The Chairperson:** I am conscious of the time. We are running close. Are there any other amendments that members want to focus on to draw us to a close earlier? Are members happy enough to wait until we get a written response on the areas that have been raised?
1433. **Mr Mitchel McLaughlin:** Yes, we will be revisiting some of this anyway.
1434. **Ms Coyle:** Yes. It is just unfortunate that, on the particular clauses that we are considering amending, we could not come back and say that, having spoken to the Minister, that would happen. We just wanted to give you a steer that we would certainly be reconsidering those issues, and it may give you an idea of the amendments that the Committee might consider.
1435. **The Chairperson:** The message to the Minister is that he needs to get his skates on with this, because we have the Bill Office waiting. If we get this next week, the Bill Office will have only a week to draft amendments. Ultimately, any further inaction will frustrate the Committee in carrying out its statutory role. So, he needs to get this sorted.
1436. **Ms Coyle:** I make a commitment that we will contact the private office today and try to get an update for the Committee on where those two papers are at the moment.
1437. **The Chairperson:** OK.
1438. **Mr Cree:** Responses were due last Friday and today. Do we have them all now?
1439. **Mrs Coyle:** That is what I am saying. They are both with the Minister at the moment.
1440. **Mr Cree:** Does that mean that we not have them at all yet?
1441. **Ms Coyle:** Last Friday's paper is currently with the Minister. Given the timeline for this one, we were more or less just going to cover these issues in the evidence session. However, if it helps, we can obviously cover in a written response to you the issues that you sent us in a letter on 17 October. Hopefully, by that stage the Minister will have come back to us, and we can be more positive in our response to the proposed amendments.
1442. **The Chairperson:** Thank you.





## 6 November 2013

### Members present for all or part of the proceedings:

Mr Daithí McKay (Chairperson)  
 Mr Dominic Bradley (Deputy Chairperson)  
 Mrs Judith Cochrane  
 Mr Leslie Cree  
 Mr Paul Girvan  
 Mr John McCallister  
 Mr Mitchel McLaughlin  
 Mr Peter Weir

### Witnesses:

Ms Patricia Casey                      *NIA Bill Office*

1443. **The Chairperson:** Moving on to consideration of issues from the evidence, I suggest to members that we focus only on the residual matters and related clauses about which you still have concerns. I refer you to the table of issues in the pack. To assist members with this, I suggest that they may wish to concentrate in particular on clauses 7, 9, 10, 13, 14, 21, 22 and 23.

1444. We will start with clause 7, which is on the scheme advisory board. I refer to page 15 of the table, which is at page 30 of your packs. Are members satisfied with the Department of Finance and Personnel (DFP) response to the issues raised on clause 7? If not, are there any proposals for an amendment to be drafted for consideration that would aim to provide for the independence of the scheme advisory board?

1445. **Mr Weir:** I am happy enough, Chair.

1446. **The Chairperson:** OK. You are happy enough. There are no amendments to that.

1447. We will move on to clause 9. I refer to the bottom of page 24 and the top of page 25 of the table, which are in pages 39 and 40 of your pack.

1448. **Mr Weir:** On that issue, I think that there is a reasonable enough point. I will wait to see whether there are any legal

implications on which to reflect. That was one issue on which the Department indicated that it would reflect on our thoughts and come back to us. Perhaps we could leave that particular point until we get a response.

1449. **The Chairperson:** OK. Are members happy to park that in the meantime?

*Members indicated assent.*

1450. **The Chairperson:** Clause 10 deals with pension age. I refer to pages 32 to 24 of the table, which are at pages 47 to 49 of your pack. Obviously, there are two parts to clause 10; the appropriate normal pension age for schemes and perhaps introducing flexibility for individual Departments and the Fire Brigades Union (FBU). Perhaps we could park the first issue for a week until we get clarification of the Executive's position on it and come back to that and to clause 9.

1451. **Mr Weir:** The second part of it is on the Fire Brigades Union situation. Obviously, we have agreed to seek various bits of information from the Department of Health. It may be better to deal with it then. I suspect that the Fire Brigades Union stuff might also become a moveable feast, because, as I understand it, there are certainly wider negotiations with it in the wider context. That could well impact on what eventually happens here.

1452. **The Chairperson:** Are members happy enough to park that issue?

*Members indicated assent.*

1453. **The Chairperson:** Clause 13 deals with employer contributions in funded schemes. I refer to page 42 of the table, which is at page 57 of your packs. Are members satisfied with the DFP response, or do they wish an amendment to be drafted for consideration that would aim to enhance the independence of the person who is

- appointed to review actuarial evaluation and employer contribution rates?
1454. **Mr Weir:** I am happy enough with the response so far.
1455. **Mr Mitchel McLaughlin:** It would be to everybody's advantage if there is seen to be a clear demarcation between the scheme managers and those who have a direct responsibility. If we are not satisfied with the response, we should consider an amendment.
1456. **The Chairperson:** OK, members. Are there any other views? Are members happy enough for the amendment to be drafted for further consideration?
1457. **Mr Mitchel McLaughlin:** We will take a look at it then.
1458. **Mr Weir:** That does not necessarily mean that we will agree it.
1459. **The Chairperson:** We will move on to clause 14. I refer to page 43 of the table, which is at page 58 of the pack. Are members satisfied with the Department's response on clause 14(6), or do they wish an amendment to be drafted for consideration that would strengthen the clause by seeking to ensure that benefit information is provided in such a manner that scheme members are reasonably able to understand it?
1460. **Mr Weir:** The Department has given indications of regulations that will be drafted for direction at that stage. I am not altogether sure whether any amendment of that nature will be required in the legislation.
1461. **The Chairperson:** Are you saying that you are happy enough, Peter?
1462. **Mr Weir:** I am probably happy enough with that side of it. The key bit is what would be there if, for example, there were an amendment that said that it had to be reasonably understood. I would like to think that anything that is produced should be reasonably understood anyway. The detail of something of that nature normally happens in directions and subordinate legislation. I am not sure that it takes us very much further forward simply to have that in the legislation, to be honest.
1463. **The Chairperson:** Have members any other views? Are you content?
- Members indicated assent.*
1464. **The Chairperson:** Clause 21 is on consultation. I refer to page 47 of the table, which is at page 62 of your packs. Are members satisfied with the departmental response on the consultation provisions in clause 21, or do they wish to consider an amendment that would include in the Bill a duty on the Department to consult relevant stakeholders before exercising the various order- and regulation-making powers in the Bill?
1465. **Mr Cree:** That is reasonable, but would that not be more properly in the secondary or subordinate legislation?
1466. **The Chairperson:** Are there any other views, members?
1467. **Mr Girvan:** On the Department's response to this, I agree that agreement is not always achievable. On that basis, you have to accept what the Department says on that point. You will not get agreement. You can understand why you will not get agreement with some of the people who we have had at the top of this table on many occasions.
1468. **Mr Mitchel McLaughlin:** I thought that Grace answered her questions.
1469. **Mr Cree:** Very diplomatic.
1470. **The Chairperson:** Are members content?
- Members indicated assent.*
1471. **The Chairperson:** Clause 22 concerns the procedure for protected elements. The details of that are in page 49 of the table, which is at page 64 of your packs. Are members satisfied with DFP's assurance, or do they wish an amendment to be drafted for consideration that would provide a safeguard in the Bill to ensure that reports are laid in the Assembly in sufficient time? Are members content?
- Members indicated assent.*

1472. **Mr Mitchel McLaughlin:** It is difficult to know what we could do in a practical way there. I suppose that there is always the possibility of a negative effect, but, in regulations or secondary legislation impacts, we could consider that again. I am not clear what meaningful amendment we could offer at this stage, given that it is a framework approach.
1473. **The Chairperson:** Clause 23 deals with the procedure for retrospective provision. That is on pages 57 to 59 of the table, which is at pages 72 to 74 of your packs. This relates to option 4 for improving the safeguards around accrued rights and retrospective changes under clause 23. Are members satisfied with DFP's response, or do they wish an amendment to be drafted for consideration that would, for example, either require the affirmative procedure for all retrospective changes or require the affirmative procedure for all retrospective changes appearing to the responsible authority to have any adverse effect, as opposed to any significant adverse effect?
1474. **Mr Mitchel McLaughlin:** Again, it probably would be helpful to have a draft in front of us so that we could look at it then. We may get some additional information back as well.
1475. **The Chairperson:** Are members content with that?
- Members indicated assent.*
1476. **The Chairperson:** Do members wish to discuss any other issues relating to these or any of the other clauses before we move on?
1477. **Mr Cree:** Chair, we have the "significant adverse effect", but I do not think that we will get any better than that. It is still not very satisfactory at all. We do not have a definition for it.
1478. **The Chairperson:** Are there any further proposals or actions on that?
1479. **The Clerk Of Bills:** May I clarify? Do members want both options drafted, or is it the amendment that requires the affirmative procedure for all retrospective changes that have any adverse effect?
1480. **The Chairperson:** I think that it is both.



## 6 November 2013

### Members present for all or part of the proceedings:

Mr Daithí McKay (Chairperson)  
 Mr Dominic Bradley (Deputy Chairperson)  
 Mrs Judith Cochrane  
 Mr Leslie Cree  
 Mr Paul Girvan  
 Mr John McCallister  
 Mr Mitchel McLaughlin  
 Mr Peter Weir

### Witnesses:

|                     |                      |
|---------------------|----------------------|
| Mr Stephen Ball     | <i>Department of</i> |
| Ms Margaret Coyle   | <i>Finance and</i>   |
| Mrs Grace Nesbitt   | <i>Personnel</i>     |
| Mrs Blathnaid Smyth |                      |

1481. **The Chairperson:** You are all very welcome to the Committee again. Grace, before we kick off, something has been brought to my attention by some Department of Finance and Personnel (DFP) workers in Derry. It has been reported that some 80 jobs may be on the line at Waterside House. Sources have indicated that there might be a loss of £1 million to the local economy and that some options are being accelerated for partial or full outsourcing. I have spoken to Committee officials, and there has been no contact with the Committee on any of those proposals. Would you care to elaborate on that?

1482. **Mrs Grace Nesbitt (Department of Finance and Personnel):** I am happy to provide an initial update to the Committee this morning and to attend a fuller evidence session. I realise that this morning's session is very much concentrating on pensions, and we have quite a lot of detail to get through. I will give you a few initial comments, and then, if you are agreeable, I will write to the Committee and set it out in more detail. I am happy to come back again at a further evidence session. I do not want to take up too much time this morning.

1483. It is incorrect to say that 80 jobs will be lost from Civil Service pensions. That is factually incorrect, and the fact that it is factually incorrect has been communicated to staff and the unions repeatedly. It is true to say that we are in the middle of a project to look at replacing our IT systems. At the minute, we have two systems, and, to keep it really simple, one administers and one pays pensions, and our arrangements for those contracts are coming to an end. The intention is to look at options to replace those with a single end-to-end system that will both pay and administer pensions and have a self-service facility. That in itself will require fewer staff to operate it. Therefore, there will be —

1484. **The Chairperson:** So there will be job losses.

1485. **Mrs G Nesbitt:** Just let me finish, and I will explain. I will then be happy to take your questions. Fewer staff will be required to operate the system, so there will be fewer staff working in Civil Service pensions. There is a range of options, which fall into two broad camps. I will come on to the staffing implications after I finish this little introduction. One option is that we simply replace the system and that it continues to be operated by civil servants. The second option is not only to replace the system but to look at a managed service. Under the guidance for procurement, we are required to look at that range of options. Those options are still being considered, and we are working through the outline business case at the minute.

1486. It is true to say that, if the option for a managed service is adopted, it will obviously have a greater impact on the number of civil servants required to operate it. So what will happen to the staff? What numbers are we talking about? We are certainly not talking about 80, because, as you will be aware

- from the officials from Civil Service pensions who are sitting with me, pensions do a lot more than administer and pay pensions. We have a resource for policy and legislation, a resource on communication and other functions to do with finance. So the figure of 80 is factually inaccurate and extremely misleading.
1487. I move now to what will happen to the reduced resource of people who will be required to operate whatever option is adopted in Civil Service pensions. Those people will not lose their job; they will not, as one local paper said, be on the dole. Rather, in accordance with our agreed procedures, which are in our HR handbook and were agreed following consultation with the trade unions, they will be redeployed in line with our policy on redeployment. There are rules and protocols in place about more junior grade staff, their mobility and where they can be redeployed to.
1488. In summary, there will be a reduced staffing requirement for Civil Service pensions. The quantum of that reduction will depend on the option that is adopted. Nobody will lose their job as a civil servant. Rather, they will be redeployed, and the intention is to endeavour to redeploy them within the general area. We have policies in place that enable us to do that, and we have done it over the years for other areas. When people move and get promoted, for example, we do not fill that vacancy substantively. We fill it with temporary promotion, maybe, or by way of other arrangements that we have at our disposal. We can manage that process over a period, working with staff and the unions to accommodate people as best we can.
1489. Maybe it would be helpful if I wrote to you with some more details.
1490. **The Chairperson:** How many do you predict will be redeployed?
1491. **Mrs G Nesbitt:** We do not know yet. We are still working through the figures. I am not in a position to —
1492. **The Chairperson:** Is there any estimate?
1493. **Mrs G Nesbitt:** Not really; we are still working through that. It is early days.
1494. **The Chairperson:** Could it be 50 to 100, or 20 to 30?
1495. **Mrs G Nesbitt:** It could not be 100, because we do not have 100 people working in pensions.
1496. **The Chairperson:** So it is fewer than 100; we are getting closer.
1497. **Mrs G Nesbitt:** I am conscious that this is an evidence session, so I am loath to give exact figures, but, off the top of my head, we have 93 people working in pensions. The split between those who are working in administering and paying pensions is maybe about 50. I would really need to get exact figures, and, as I said, I am loath to give anything else to the Committee. We also have a fair proportion working in other areas such as policy and legislation, finance and communication. Not everybody who works in pensions works in the paying and administering of pensions. Not everybody works in those processes. So the figure of 80 is definitely inaccurate.
1498. I will provide a written submission to the Committee and try to set out as much information as I can and give you an update on where we are with the general procurement process, if that would be helpful. If you want to schedule another slot, we can come back. I think that I am here for the whole month of November anyway; I am so popular. *[Laughter.]* If you want to add it on to one of those sessions, I am happy to oblige. I am not sure what your timetable is, because I realise that the Pensions Bill is taking up a significant amount of your time. I appreciate the time that you are spending on it. I will give you a written submission, Chair, if that would be acceptable. If members wish, you can slot me in to one of the other sessions in November.
1499. **Mr D Bradley:** Can you mention again the two options that you referred to?
1500. **Mrs G Nesbitt:** You look at a number of options in an outline business case. One option is to do nothing. There are

variables in the range of options, but they fall into two broad camps. One is that we replace our IT system and that it will continue to be operated by civil servants. It is an end-to-end system that will administer and pay, and have self-service. The staff operating it and the unions understand that it will require fewer staff because it will be a modern, up-to-date system that will do both functions and there will not be an interface, because it is self-service. That will in itself require fewer staff to operate. That is one main set of options.

1501. The other option is that we go down the route of having a managed service, where the functions of administering and paying pensions would no longer be carried out by civil servants. We are required to look at, explore and examine these options in the interests of getting best value for public money. That is the process that we are now following. Those are the two broad options, but there are variables within them.
1502. **Mr D Bradley:** Does “managed service” mean that they would be outsourced from the public service?
1503. **Mrs G Nesbitt:** Yes. It would no longer be operated by civil servants.
1504. **The Chairperson:** As you are not sure about the numbers that are going to be redeployed, I presume that there will be no decisions made on this until after Christmas.
1505. **Mrs G Nesbitt:** We are working on and refining the outline business case at the minute. That has to go through a number of internal approval processes that the Committee may be aware of. It has to go to the finance part of DFP and then the supply part, which happens to be in DFP. Two parts of DFP have to consider that, which would then inform a submission to Minister Hamilton, who will then be asked to make a decision. Ideally, we would like that to happen this side of Christmas, because one of the issues that I am mindful of, if I can elaborate for the Committee a little, is the cost of delay. That is over £60 million for the Civil Service scheme. I am reluctant to refer to the Government Actuary's Department (GAD) costs yet again, but I have to. If we do not have the revised Civil Service scheme in place by April 2015, we will face a substantial penalty from the Treasury, so whichever option is adopted in the procurement process, the sooner we have that resolved and completed and a new system in place, the better, so that we can work on it and make sure that it is up to delivering the specific scheme requirements for the new scheme in April 2015. We are up against time pressure in this process as well.
1506. **The Chairperson:** Will the trade unions and the staff who will be affected be consulted on the business case before it gets to decision stage?
1507. **Mrs G Nesbitt:** Trade unions and staff have been consulted on this matter for some time.
1508. **The Chairperson:** Have they seen the business case?
1509. **Mrs G Nesbitt:** I am just coming to that. Just for the record, trade unions and staff have been consulted for some time. They understand the process. The protocol in DFP is that business cases are not shared with the trade union side until after the Minister has seen them and taken a view. That is the protocol that has been operating in this Department. Other Departments may have a different approach, but that is the approach that has been operated in the Department of Finance and Personnel. We are not doing anything different in disclosing the business case; that is done with other DFP business cases of this nature.
1510. **The Chairperson:** I have one final point. You said that redeployment would be done within the local area. Would staff stay within the city, or is there a possibility that some people would have to move to Belfast?
1511. **Mrs G Nesbitt:** There is a possibility of that, but because we will be trying to identify as soon as we can what the option is through working with staff and

- managing that over time, different rules apply to redeploying staff. Without going into too much detail, more junior staff — for example, staff who are AAs and AOs — have what is called a “mobility restriction” on how far they can travel. The intention in the policy would be that they should be redeployed within the constraints of mobility. For staff above those levels, we are looking at working with staff to accommodate them.
1512. We are fortunate in that we have a number of competitions coming up, internal and external, which will create a certain churn and turnover throughout the Civil Service. Our intention is to work with staff to get the staff that we have to redeploy to the type of job that they would like and also to the location that they would like as far as is possible. That is our intention, and we plan to do that over a period of time. It is not as though, whatever number of staff we reduce by, it will happen in one day. There will be a phased transitional process that will be managed over time.
1513. **Mr Cree:** Have you had any discussions with your colleagues in the Department of Agriculture and Rural Development (DARD) about this issue that may lead to mutual benefits?
1514. **Mrs G Nesbitt:** I have not had any direct discussions with DARD. However, I recently made a presentation to DARD on the people strategy — I think that I will be doing the same for this Committee in November — and I am very aware of Ballykelly and its potential. That is a strong possibility and an opportunity for staff, but, until we know the numbers we are dealing with, we cannot say that there will be x number of people, the type of people they are and the areas that they would like to go to. I am very aware of the issue, and we will certainly be picking up on it.
1515. **Mr Cree:** Will it be part of your strategic planning?
1516. **Mrs G Nesbitt:** It will be part of my planning. I do not know whether I would call it strategic or not at this stage.
1517. **The Chairperson:** OK, Grace. We will move on to the substantial business. We will go through each response to each issue. It may be more useful to concentrate on those issues and the related clauses about which members have queries and concerns.
1518. **Mrs G Nesbitt:** I realise that there is a lot to get through, so, to make the best use of our time, we — more honestly, my colleagues — have gone through and looked at the detail of what we promised the Committee and what the outstanding issues are. We prepared a little note that I think will pick up on all your issues. In the interests of time, I will go through that, if permitted. I will do that as quickly and as promptly as I can.
1519. **The Chairperson:** I have heard that before.
1520. **Mrs G Nesbitt:** I will try to talk as quickly as I can. I think that that will be the best use of our time.
1521. **The Chairperson:** How many pages is it?
1522. **Mrs G Nesbitt:** It is about 10 pages, but I will talk quickly. When I was in the canteen this morning, I put a line through some bits.
1523. **The Chairperson:** I think that it would be more useful to go through each clause. I will take members views on that. It will be only particular clauses that members will want to focus on. Are there any views?
1524. **Mrs G Nesbitt:** Issues were raised that are not necessarily about a clause. There are general issues, and there are also items that I said that I would follow up on. It is entirely down to you on what you think would be the best use of your time.
1525. **The Chairperson:** Members, what do you think?
1526. **Mr Cree:** It would have been nice, Chair, to have had that in advance so that we could have had a look at it first.
1527. **Mrs G Nesbitt:** We were pressured for time, to be honest, and we did get quite a lot of information back to



- the Committee, so not that much is outstanding. That is why I think that, if I cover the issues in my note, you can tick them off.
1528. **The Chairperson:** Are these the issues that we already have in our papers?
1529. **Mrs G Nesbitt:** No, some issues were outstanding, and we were still to follow up on them. We are going to spend more time talking about whether we do it or not. If you give me five minutes, you can then put a guillotine on it.
1530. **The Chairperson:** Five minutes: your time starts now.
1531. **Mrs G Nesbitt:** The issues are firefighters; Northern Ireland Local Government Association (NILGA) correspondence; teachers; clause 32; and negative resolution. Other issues were opt-outs and links to schedule 1 bodies.
1532. On firefighters, we have confirmation of the proposed scheme design from officials in the Department of Health, Social Services and Public Safety (DHSSPS). I will clarify a few points very briefly. There are currently two options on the table with the Fire Brigades Union. Under option 1, members who are aged 57 can retire early with immediate pension benefits and be actuarially reduced up to 60. Under option 2, the age is 55 rather than 57 for people who can retire early with immediate pension benefits and be actuarially reduced up to the age of 60. There are other rules for people who leave earlier than that, but, in the interests of time, I will not go over that. If you would like more detail on the firefighters' proposals, it might be helpful to write to the Department of Health, or I can do that on your behalf.
1533. **Mr Weir:** I think that it would be helpful if we got that formally.
1534. **Mrs G Nesbitt:** I am very conscious of your time. To be clear: would you like us to write, or would the Committee like to write?
1535. **The Chairperson:** Does the Committee want to write?
1536. **Mr Girvan:** I think that it should be the Committee.
1537. **Mrs G Nesbitt:** That is fine. Thank you.
1538. **Mr Mitchel McLaughlin:** How are firefighters regarded? Are they members of the wider public service?
1539. **Mrs G Nesbitt:** Yes.
1540. **Mr Mitchel McLaughlin:** In their rotation to non-operational roles, is there a wider canvas in which we can consider the options, other than simply in the Fire Service, which has very limited options?
1541. **Mrs G Nesbitt:** I would need to defer to colleagues in the Health Department. Are you suggesting that a firefighter could transfer to the Civil Service, for example, or to another part of the public sector? Is that what you mean, Mr McLaughlin?
1542. **Mr Mitchel McLaughlin:** Yes, basically that is the theory. We could go for ridiculous examples, but a limited number of firefighters will have difficulty in achieving the operational fitness threshold come 55 years of age and may not be able to afford the option of retiring early and taking a reduced pension or wish to retire. However, there may be skills that would make, for instance, Fire Service back-office functions a viable option if there were sufficient places, which we are told that there may not be. I really have no information on what skills set firefighters who cannot achieve the fitness threshold would have. The Health Department is a significant Department, and I assume that more options would be available there than within the Fire Service and, if it comes to it, within the wider public sector. There may be sufficient spaces there to provide that type of assurance and security for firefighters.
1543. **Mrs G Nesbitt:** To explain that, I will need to get more information from colleagues.

1544. **Mr Mitchel McLaughlin:** I am quite happy to have you look at that and come back to us rather than have a theoretical discussion about it.
1545. **Mrs G Nesbitt:** I do not think that it is possible. If you are employed as a firefighter, the Fire Service is your employer, and you are a member of the firefighters' pension scheme. You would not have any automatic right to move to another part of the public sector to work. That just would not happen. You would have to apply and compete like other people. Likewise, if civil servants were no longer fit for their particular duties and requirements in the Civil Service, they could not perform a back-office function in the Fire Service because they are separate employers and organisations. However, I will check. Perhaps the Committee would like to raise that issue if it is writing to the Health Department, but that is my understanding of employment law.
1546. **Ms Margaret Coyle (Department of Finance and Personnel):** I think that Mr McLaughlin's point is that the DHSSPS is a large umbrella, and the Fire Service falls under that umbrella. However, as Grace pointed out, the job of firefighters is specific. We could possibly check with our DHSSPS colleagues to see whether they looked at what would happen in that type of scenario and whether they could find areas of work for those firefighters.
1547. **Mr Mitchel McLaughlin:** There may be unique circumstances that affect firefighters for their operational fitness requirement. Rather than erecting Chinese walls, we should be looking to make options available to people who have been faithful and effective workers. However, they reach a particular threshold that other skills and requirements do not. If we come at this issue narrowly focused, we are, in a sense, making it difficult for them and impossible for us.
1548. **Mrs G Nesbitt:** Would the Committee like to raise that when it writes to the Department of Health, or would you like me to follow it up with that Department?
1549. **The Chairperson:** We can chase it up with the Department of Health.
1550. **Mr Mitchel McLaughlin:** That may or may not be possible, but I suspect that, if firefighters are regarded as belonging to the family of the public sector, maybe their options have just not been explored.
1551. **The Chairperson:** I am just trying to tease this out in my own head. Theoretically, if you have a firefighter aged 58 who cannot meet the fitness requirements in the Fire Service, there is nowhere in the back office for him or her to go. What are the options for the Department there? Would they be forced —
1552. **Mrs G Nesbitt:** You would need to check that out in detail with the Department of Health. I provided information on the options that people have and at what age those apply for actuarial reduction. It would be best if more detail came from the Department of Health.
1553. **The Chairperson:** Even though that person may be willing to work those extra years until the age of 60, will the Department of Health just say, "We cannot keep you on"?
1554. **Mrs G Nesbitt:** Sorry, I mean the Department of Health for the rules and options in the firefighters' pension scheme and what opportunities there would be in the Fire Service. I am not in a position to speak in detail to the Committee about that.
1555. **The Chairperson:** Surely, you must have some sense of the issue.
1556. **Mrs G Nesbitt:** I do not have any sense in terms of the question that Mr McLaughlin asked; I am just speaking from my perspective of employment law. I do not have detail on what the scope and operational requirements of the Fire and Rescue Service in Northern Ireland will be.
1557. I have provided the Committee with the information from the Williams report on capability. The report did not recommend a reduction in the age of

- retirement for firefighters. It made other recommendations, but it did not go as far as saying that firefighters could not work up to 60. I do not have more detail on the firefighters' scheme with me.
1558. **The Chairperson:** I am going to ask you another question to which you probably do not know the answer.
1559. **Mrs G Nesbitt:** OK. The clock stopped at about five minutes.
1560. **The Chairperson:** There is an annual turnover of firefighters who reach pension age. How many are we talking about?
1561. **Mrs G Nesbitt:** I am sorry, but I do not have the detailed scheme-by-scheme information. Can I start the clock again?
1562. **Mr Mitchel McLaughlin:** Can you remember where you were?
1563. **Mrs G Nesbitt:** Yes, I skipped about five pages.
1564. There was a suggestion from local government that the provision be made in clause 7 to appoint the scheme advisory board established for schemes in England and Wales as the board for Northern Ireland also. It was suggested that that would be more efficient. That is an amendment that we will not be considering. We touched on that briefly at the session on 23 October.
1565. As the Assembly is a devolved administration, the appointment of the scheme advisory board will be the responsibility of the relevant devolved Minister, scheme officials and scheme representatives. The details of the appointments and the make-up of the advisory board will be addressed in scheme-specific consultations with the union and as part of the secondary legislation issue. That will provide scope for them to look at the issue and address it.
1566. **Mr Weir:** You are saying that it is a matter for Ministers because responsibility has been devolved. Mention was made of the Northern Ireland Local Government Association's (NILGA) preference — I declare an interest as a member of NILGA — for this to be handled on the... Is the option there for the Minister to say, if he was so minded, that it should be, for the sake of convenience, handled by that bit?
1567. **Mrs G Nesbitt:** Yes.
1568. **Mr Weir:** So, it is a question of leaving it to the scheme-specific quantity.
1569. **Mrs G Nesbitt:** The Public Service Pensions Bill is an enabling framework Bill, so there are things in the secondary scheme that are permissive.
1570. **Mr Weir:** So the option would be open to him if he wanted to take it.
1571. **Mrs G Nesbitt:** Yes, that is my understanding.
1572. **The Chairperson:** The Department is indicating that it does not agree that the scheme advisory board should comprise a balance of employer and member representatives. What safeguard will exist to ensure that such boards are impartial and independent and that they do not exist merely to tell the Department or the responsible authority what it wants to hear on major reforms?
1573. **Mrs G Nesbitt:** The Department has to look at the make-up and ensure that it has the right people. There are other references in the Public Service Pensions Bill to what those people should be and who should be members of the board. Therefore the governance arrangements are generally an improvement on how we will manage public service pension schemes. There is discretion at secondary legislation, as your colleague said, for the Department to consider that. However, there are safeguards for what is required of boards; they have a duty and will be accountable.
1574. The National Association of Schoolmasters Union of Women Teachers (NASUWT) has suggested an amendment to clause 7, which, again, is about the scheme advisory board. It suggested that it should be a negotiating board with a wider remit than that allowed in the Bill,

- with equal representation from unions and the employer side. Again, we will not be considering that amendment. The scheme advisory board is not a negotiating board in that sense, so we do not agree with that.
1575. Consultation is the term — we will revisit that — that we have used in pension legislation, and that is correctly reflected and links in with clause 21. It touches on the local government issue that you just dealt with. The secondary legislation gives scope there, with the unions, Departments and respective Ministers, to refine scheme-level arrangements and to look at the detail to make sure that it is delivering appropriate and proper governance. Have members any comments on that clause? I will just pause there.
1576. I turn to clause 32. This relates to the amendment that the Committee asked about, whether the term “may” should be replaced with “must”. The Department will not be considering that amendment. Let me explain. The purpose of clause 32 is to give existing public body schemes powers to include a link to the provision of normal pension age, which is scheme pension age or state pension age provision, if they do not already have those powers. Because this is about giving powers and not about an obligation, “may” is the correct legal term to use. That is the advice that we have been given.
1577. Clause 32 is designed for a public scheme that wants to reform its current scheme but does not have the power to do so. Clause 31, however, is designed to force schemes to reform if they have not done so, by closing them to new service and making them either join a reform scheme, which must have normal pension age provisions because of clause 10, or to set up a new scheme. In summary, therefore, our view is that the term “may” is correct, and we have taken advice on it.
1578. I will pause there. Are there any questions on that? No? OK, then I will keep going.
1579. There has been discussion at evidence sessions about the negative resolution procedure. The Committee expressed concern that people look to the Assembly to have a more direct involvement in the process of regulation. The Department considers the negative resolution process to be appropriate. It provides the Assembly with the option of debating any proposed scheme changes if necessary, and a Committee or an MLA can pray against a decision, which will force the issue to a direct debate in the Assembly. We consider that the affirmative resolution procedure would be inappropriate. Most scheme regulations are technical and make quite detailed amendments. An individual statutory rule can take up to six months to introduce under negative resolution procedure. We need to be mindful of the time that that takes and that any delay could have a financial consequence.
1580. I will give you some examples. We make regulations for the Pensions Increase (Review) Order, which may not be as much as our pensioners would like, but it often comes through with a very short timescale between when the decision is made and when it is adopted by the Department for Social Development (DSD), following on, usually, from the Department for Work and Pensions (DWP). The time we have to get the legislation through, and the pension increases in place for pensioners across the public services by April each year, is very short. That is done extremely quickly — sometimes in a matter of days, not even weeks. Another example, which the Committee will be well aware of, is the increase in employee contributions. Again, that has had to be done quickly because we are aware that any delay will cause a financial penalty with Her Majesty’s Treasury. We had the option of using retrospective powers, although we did not get that through in time. However, that was a place to which we did not want to go because not only would people have to pay more, but they would have to pay more in a shorter time. Those are some examples of the legislation that we make and our view on it. I will pause there.

1581. **The Chairperson:** You should not pause as your time is nearly up. *[Laughter.]*
1582. **Mrs G Nesbitt:** OK. I will press on to the issue of opt-out information. If the Committee wishes, I will provide that in a detailed written submission. Do you want me to skip that bit?
1583. **The Chairperson:** Yes.
1584. **Mrs G Nesbitt:** OK.
1585. **Mr Mitchel McLaughlin:** May I comment on the impact of the changes on broad pension entitlements as people understand them? I am not sure that it is appropriate to say that this is the commonly used approach. It is a unique situation that we will visit in this debate, and I hope that we will not revisit it for a generation at least.
1586. **Mrs G Nesbitt:** So do I. *[Laughter.]*
1587. **Mr Mitchel McLaughlin:** So I am not sure that you can rely on the defence of the use of negative resolution procedure, for which you argue. This is an issue of significant public and political interest, and I think that the parties will have some difficulty in accepting that rationale.
1588. **Ms Margaret Coyle (Department of Finance and Personnel):** Our concern is that there are so many minor scheme amendments. Where do you draw the line between the negative and positive? You need to be very careful. As I said on the 23 October, we could be inundating the Assembly with loads of minor scheme regulations. You really do not want to go down that road either. It is about deciding on the best approach to take. We have affirmative resolution in important matters such as retrospective provision; therefore it is about deciding where it is appropriate and being very careful that the Assembly does not give itself a lot of work on issues that are not particularly —
1589. **Mrs G Nesbitt:** Some of it is quite technical.
1590. **Mr Mitchel McLaughlin:** I understand. I am making the point that this is a once-in-a-generation process and the

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

1591. **Ms Coyle:** You are prepared to be in the firing line instead of us. Is that what you are saying?
1592. **Mr Mitchel McLaughlin:** No, we will put the blame where it belongs. *[Laughter.]*
1593. **Mrs G Nesbitt:** I can feel it already.
1594. **Mr D Bradley:** Clause 24 lays out when regulations will be subject to affirmative procedure and says that one such case will be when:  
  
*“(procedure for retrospective provision having significant adverse effects) applies”*
1595. Who decides the significance of the effects, and will that be agreed with the scheme members’ representatives?
1596. **Mrs G Nesbitt:** I do not know that it will necessarily be agreed. I referred to that in the written submission to the Committee, because we tried to get a definitive legal view on what “significant” meant. We talked about it last time, and I used the word “substantial”. Interestingly enough, that was also the word that came back from our legal advisers. So I was semi on the right track. It is very difficult, I think, to have an absolute definition of what is significant; that will have to be looked at case by case. I am advised that “significant” is a word that appears in legislation generally and that people talk about a “significant disability”. However, one person’s definition of “significant disability” might differ from another’s. I appreciate that it is a difficult, subjective term, and we have tried to give as much information to the Committee, and to

- get as much from our legal advisers, as possible; however, I cannot give you an absolute weighting on what is “significant”. When we talk about loss of earnings, “significant” also depends on whether you are having to recoup money that somebody has paid and to agree a schedule with them. If they have been paid in error, you have to look at their disposable income as well. It is very difficult to give a precise and absolute definition, and I have tried to give as much information to the Committee from our legal people as possible on it. However, I cannot offer any more information on that point.
1597. **Mr D Bradley:** Who will decide on what is significant or not significant? Will it be the scheme authority or DFP?
1598. **Mrs G Nesbitt:** Ultimately, it will be the managers of the scheme and the respective Minister and Department who will look at it. I think that they would do that, considering earnings thresholds and all the variables that come into play when we look at pensions issues. Although it is an adjective commonly used in legislation, there is no absolute definition of the word “significant”. I cannot offer any more information to the Committee.
1599. **Mr D Bradley:** Would it not be appropriate for the representatives of the scheme members to have some say in what is and what is not significant?
1600. **Mrs G Nesbitt:** I think that they would have a say in it and would be given the opportunity to express a view, but your question was whether it would have to be agreed, and I do not think that that would necessarily happen. You would always be seeking to agree it, but I do not think that that could be binding because you may not be able to agree it.
1601. **Mr D Bradley:** Will that facility for representatives to have some say be included in the rules for the scheme?
1602. **Ms Coyle:** It states that the pensions board will have equal representation of scheme representatives and member representatives. At that stage, the pensions board would scrutinise the advisory board's view on whether it would have a significant or insignificant adverse effect. So it would have the opportunity to put forward a view at that stage.
1603. **Mr D Bradley:** Why does clause 24(1)(c) make an exception for the judiciary?
1604. **It states:**  
*“they are scheme regulations for a scheme relating to holders of judicial office”.*
1605. That relates to affirmative procedure again.
1606. **Mrs G Nesbitt:** I will have to come back to the Committee on that. I do not have the information to hand, but perhaps one of my colleagues does. I can follow that up and give you something in writing, or —
1607. **Mr Stephen Ball (Department of Finance and Personnel):** It would probably be best to give you something in writing. If it helps, the current position is that no judicial pension schemes are made in Northern Ireland legislation. Therefore, at the minute, it is not a factor, but the Bill provides for it in future. We will certainly follow that up.
1608. **Mrs G Nesbitt:** The judicial pension scheme is not a devolved matter; we do not have our own judicial pension schemes. Members of the judiciary are members of the Ministry of Justice judicial pension scheme.
1609. **Mr Ball:** So the clause does not really have effect in Northern Ireland at the moment.
1610. **Mrs G Nesbitt:** We will consider that and give you more information on it, Mr Bradley.
1611. **Mr D Bradley:** Clause 24(3) states:  
*“If scheme regulations otherwise subject to negative resolution are combined with scheme regulations subject to the affirmative procedure, the combined regulations are subject to the affirmative procedure.”*
1612. Why not subject them all to affirmative procedure?

1613. **Mrs G Nesbitt:** For the reasons that we outlined earlier.
1614. **Mr D Bradley:** In that case, they will be anyway.
1615. **Mrs G Nesbitt:** I will perhaps set that out in a bit more detail in writing, because I realise that that is quite convoluted legal wording. What it means is that they will not all be subject. It is stating — to go back to Mr McLaughlin's point — the current arrangements. Some exceptions will be made in the legislation such as the issue of retrospection, which my colleague referred to earlier. If it is helpful to the Committee, I will perhaps set out something in more detail and give you examples of that.
1616. **The Chairperson:** I am just wondering why there is resistance to a lot of this. The figures that we received from the Department confirmed that, in the past two years, each public service scheme introduced approximately just seven negative resolution statutory rules. That is not a big number.
1617. **Mrs G Nesbitt:** I refer again to the example of the Pensions Increase Order. DSD looks to what DWP does with pension increase, and, quite often, that comes through very late in the financial year. We endeavour to have that in place so that pensioners get their increase in their April pension payment. Quite often, that means that we literally have a matter of days to produce the legislation and to get it in place. The numbers may be a little bit misleading, as some of them are more work than others. The big issue for me is that our Pension Increase Order applies not just to the Civil Service but to other significant parts of the public service. That is one that we are always keen to get in place so that people get their increase as soon as it is due. We have very little time to do that.
1618. Again, on increased contributions, it depends on how quickly we make decisions. There is provision to do things retrospectively, but I am loath to do that. It is a timing issue as well. It is also about making sure that we stick to the timescales so that, for example, pensioners are not disadvantaged.
1619. **The Chairperson:** Why would you be loath to do it retrospectively?
1620. **Mrs G Nesbitt:** We have the power to do increased contributions retrospectively; we have checked that out. We are looking at increased contributions for most of the public service pension schemes, for example, in April 2014. If that legislation is not in place in April 2014, the Treasury has made it clear that we will face a bill of about £2 million to £3 million a month for each delay across the public service. If a sector did not have that in place in time, we have the power to suggest to the relevant Minister that either DFP take the money off that particular sector or that employees, instead of paying the increased contributions from April 2014 to March 2015, if it is going to be late, condense that and pay the 12 months' increase in contributions over six months. I would be reluctant to do that because it is easier for people, if they are dealing with any increase in contributions, to do it over a phased period of a year rather than it being condensed into a shorter period. I would be reluctant to do that in that instance.
1621. **Ms Coyle:** You said, Chairperson, that the numbers are not significant. They are not significant at the moment. Historically, however, we have found that when you introduce, for example, a new scheme — bear in mind that the new scheme will be introduced for all Northern Ireland public service pension schemes — numerous scheme amendments will follow. That figure could drastically increase once the scheme comes into being in 2015.
1622. **Mrs G Nesbitt:** There could be other minor bits that we might need to tidy up as the schemes work through that in the secondary legislation to make sure that legislative process is followed and everything is consistent. Other minor amendments will be required.

1623. **Mr D Bradley:** Will you give us examples of what will happen under clause 24(3)?
1624. **Mrs G Nesbitt:** Yes.
1625. **Mr Weir:** I presume that, as well as the Treasury indication, if you were having to use retrospective action, there is at the very least the potential for someone who benefits from a pension to get all their money. However, there will be a delay in getting it because clearly, at the time that it would otherwise have come into play, it is not coming into play.
1626. To some extent, I appreciate some of the points that were made around sensitivities of language and the way that arguments are used in relation to that. However, is it not also the case that, to some extent, if the principal objective is to make sure that nothing is put through in regulations that people are unhappy with, there is a bit of a false dichotomy between affirmative and negative resolution, arguably in the positive sense?
1627. Let us take Dominic's example about whether something is significant or not. If there was a degree of dispute about whether something was significant or not, the ultimate power to decide whether something is significant or not can also lie with the Assembly. By that I mean that if there was a feeling that something was being pushed through that was being regarded as insignificant but we felt that it was not, we could effectively turn it around because we have the power to pray against it in a debate that would require Assembly support. There is full scope on either side of it.
1628. The biggest single thing is probably the amount of time that is taken and the extent to which it clogs up the system. I would have thought that we should be looking at where there is potential discontent with particular schemes where we feel that something has been got wrong.
1629. **Mrs G Nesbitt:** You are absolutely correct: negative resolution provides scope for intervention; it is not just ticking a box.
1630. **Mr Weir:** Sometimes, people see a certain false dichotomy with that; they feel that negative resolution means that it is effectively through, whereas there is a maximum level of scrutiny with affirmative resolution. That is not really the case in that regard. There is completely the power to stop something by way of negative resolution if there is a concern about a particular matter.
1631. **Mrs G Nesbitt:** There is, and that is why that has been set up for that very reason.
1632. I know that I am well over my five minutes, but I need to make another point. I can send you this information. You wanted information on the schedule 1 bodies, and that has been, or is about to be, issued to the Committee Clerk. That was a stretched five minutes; thank you for your patience.
1633. **The Chairperson:** Clause 9 concerns revaluation. This is in reference to clause 9(1)(b) and the bottom to page 24 of the table. It states that the Committee has suggested an amendment:
- "to clarify that the revaluation should be by reference that reflects changes in prices or earnings".*
1634. The DFP response may have missed the point about how closely the revaluation should follow the changes in prices or earnings. What is the Department's view on tightening the wording as was suggested?
1635. **Ms Coyle:** Sorry, Chairperson, was that page 24?
1636. **Mrs G Nesbitt:** There are a number of comments and a few pages on clause 9. Where exactly are you, Chair?
1637. **Mrs Blathnaid Smyth (Department of Finance and Personnel):** Is the proposal to change
- "by reference to a change in prices or earnings"*
1638. to
- "reflecting a change in prices or earnings"?*



1639. **The Chairperson:** Yes.
1640. **Mrs Smyth:** We would need to take legal advice on the terminology.
1641. **Mr Ball:** The figures usually used are the consumer price index (CPI) figures or the published earnings figures, which are published by the Department for Social Development in Northern Ireland. There would not really be an option to use indices different from the published ones. The scheme regulations probably make reference to that. It is one of the variables in scheme design. They would incorporate in their scheme design what indices they use and whether it is consumer price index (CPI) plus 1% or earnings.
1642. **The Chairperson:** Do members have any other questions?
1643. **Mrs G Nesbitt:** Stunned silence. It is very technical. I feel that I have to apologise.
1644. **The Chairperson:** Clause 10 is one of the more contentious ones.
1645. **Mrs G Nesbitt:** What page are you at in the document, Chair?
1646. **Mrs Smyth:** It is page 28.
1647. **The Chairperson:** The Committee sought the Department's view on an amendment that would give individual Departments the flexibility to set the normal pension age at scheme level included in further cost-benefit analysis. The Fire Service has a clear reference to that. Does it not make sense for Departments to have more flexibility? If there are issues of added cost and parity, can the Department not have the choice of saying that, if a small number of employees is affected by something, it can bear the cost of that, rather than it being done in an overarching way, which the Bill does?
1648. **Mrs G Nesbitt:** The Department has discretion at secondary stage. That discretion could, at least in theory, be taken to the ultimate. You could, for example, say that, if people leave early on what would be termed an actuarial reduction, that actuarial reduction could be zero and the Department could make an enhancement. That would be a matter for the Department and its Minister to consider in the particular design of a scheme. It is important that, because it is a framework-enabling Bill, we have consistency across the high-level parameters that apply. I remind the Committee that there is flexibility in that, which I have said before. So, the Department considers that the right balance has been struck between setting a broad parameter to apply, but with permissive powers at secondary stage through which particular sectors or employers can look at the particular needs of their workforce. I think that we have struck the right balance there, and I think that, if it were to be changed for one scheme, it could be changed for another.
1649. We talked about health, and I know that you heard from a representative of the BMA, which is the union for doctors. If we did something different for doctors who work in emergency departments, what about other people who work in the health scheme? So, our view is that it is correct to have that in our primary legislation, and there are flexibilities in secondary legislation for Ministers and, in particular, trade unions in the sector, to consider on a scheme-by-scheme basis how they want to address that.
1650. **Mr Ball:** So, they weigh up the options. We were talking about the revaluation, and they may modify the way that they revalue benefits or modify their accrual rate to give that concession for early retirement for their employments.
1651. **Ms Coyle:** It all comes under the auspices of discretionary benefits, which we covered on 23 October. However, that would be the opportunity for schemes to decide on variances, because they have that opportunity under the discretionary powers.
1652. **Mrs G Nesbitt:** We are saying that I think that it is right that it is in the Pensions Bill and that there is scope at secondary legislation for variables to vary — that is the best word that I can use there — so that, if an employer or

- a Minister wishes to choose something different, they can.
1653. **The Chairperson:** OK, members. Is there anything else on clause 10? Are there any other points that you want to highlight, Grace? I will let you have another couple of minutes.
1654. **Mrs G Nesbitt:** No. Do you want me to start talking again? Not really. I can feel the warmth.
1655. **The Chairperson:** Do members wish to raise issues on any of the other clauses?
1656. **Mrs G Nesbitt:** I can give you the opt-out rates, if you want me to talk a bit more.
1657. **The Chairperson:** What are the opt-out rates for?
1658. **Mrs G Nesbitt:** You asked for opt-out rates and about the impact that there had been with that, and I said that I would supply you with that information. I have it now from the Civil Service scheme. We introduced a scheme in 2007 called nuvos, which is a career-average scheme with the retirement age of 65. It is quite good to look at that scheme, because new recruits to the Civil Service have been joining from that date.
1659. I have the figures. In 2008-09, we had 77 opt-outs, which is 0.2% of the membership; in 2009-2010, we had 150 opt-outs, which is 0.4%; in 2010-11, we had 26 opt-outs, which is 0.07%; in 2011-12, we had 4 opt-outs, which is 0.003%; in 2012-13, we had 28 opt-outs, which is 0.08%; and in 2013 to date, we have had 13 opt-outs, which is 0.04%. I think that that was in the context of increased contributions and people knowing that pension schemes were changing. I think that that is good news, because I have the view that public service pensions and our Civil Service pension scheme, which I am responsible for, is still a good pension scheme. So, it is quite good that the people who join, and particularly the young people, are choosing to stay with the scheme. We have had auto-enrolment for a long time, and it has now come into regulation. It is quite good, and, where their future is concerned, it is quite good that they are saying so. So, the figures are really very, very low. Thank you for that time.
1660. **Mr Mitchel McLaughlin:** Are those figures calculated on the basis of the overall staff complement in the Civil Service or from the cohort that joined the scheme?
1661. **Mrs G Nesbitt:** No, it is the overall membership. I think that your point is whether we should perhaps look at the numbers who were recruited who joined. If so, the number is still very, very low.
1662. **Mr Mitchel McLaughlin:** Long-standing members of the schemes are not opting out; they cannot afford to. If we were to look at the new recruits and run the percentages, we would see that it might give us a different picture.
1663. **Mrs G Nesbitt:** That is the new recruits.
1664. **Mr Mitchel McLaughlin:** That is what I was asking.
1665. **Mrs G Nesbitt:** Sorry, my apologies. I misunderstood. That is the new recruits, because under the new scheme —
1666. **Mr Cree:** Just on that, to what other pension scheme could those people go that could be more advantageous?
1667. **Mrs G Nesbitt:** None.
1668. **Mr Cree:** So, what are you talking about?
1669. **Mrs G Nesbitt:** You asked for information. My view is that our scheme is a good scheme. I have to be careful, because I am not allowed to give advice, but my scheme is a good scheme. We encourage people to take independent financial advice if they want to join another scheme. In my experience, people who have done that have come back and said that they will stay with a public service scheme, whatever that scheme is. That is because, even with the reformed scheme, the changes that are coming and the increasing employee contributions, it is still an excellent scheme —

1670. **Mr Cree:** Grace, you are not aware of a better scheme; is that what you are saying?
1671. **Mrs G Nesbitt:** I have not gone looking for one, personally. I have stayed with it and paid my increased contributions, and I have no intention of leaving it. I am quite happy to declare publicly that I am a member of the principal Civil Service pension scheme. However, we give people the choice, and they can leave it. In other jurisdictions, you are not given the choice; you have to stay with the public service pension scheme. We have not quite gone that far, but we really are encouraging people to think longer term.
1672. **Mr Mitchel McLaughlin:** This is a separate question, because my brain works slowly at times. Apropos my earlier point, how many members of what we might call the uniformed services are linked to the Civil Service scheme?
1673. **Mrs G Nesbitt:** I do not know whether you would call them uniformed services. The only one that I can think of —
1674. **Mr Mitchel McLaughlin:** That expression is used in this report, by the way.
1675. **Mrs G Nesbitt:** Where the principal Civil Service pension scheme is concerned, you would be thinking of prison officers, if you would class them as a uniformed service. The prison sector —
1676. **Mr Mitchel McLaughlin:** We also came across that when we were wrestling with the equal pay settlement. It seems that, almost as an argument of convenience, sometimes they are and sometimes they are not. Sometimes they are fish, and sometimes they are flesh. If they are in common pension schemes, does the original point that I was making about there being more options for redeployment than we are presently being offered not apply? If it can apply to the pension scheme, surely it can apply to giving them options for staying in employment.
1677. **Mrs G Nesbitt:** I will just give you the example of prison officers. It is an example that arose and on which I was recently asked for advice where a particular prison officer is concerned. I do not know whether he wanted to be medically retired or whether management wanted that. I do not know the detail, but there is a view asking whether, rather than offering somebody medical retirement, they could be redeployed. However, under the particular rules, the view is that they are employed as a prison officer — that is the job that they were employed to do — and they had to be capable of doing that job, rather than moving to work as a deputy principal or a staff officer in admin.
1678. There are particular rules on what flexibilities there are and what rights individuals have in their terms of appointment. That is a particular issue with prison officers. I am thinking of somebody who may be willing to be redeployed within the same employer and how the principal Civil Service pension scheme would apply. You will be getting information on our schedule 1 bodies, for example — I am trying to think of an example of a schedule 1 body. The Equality Commission is one such body. If somebody was working in the Equality Commission and was no longer fit to serve there, they could not simply be transferred to work in Civil Service pensions in DFP, because they are two entirely different employers. So, being a member of the same pension scheme does not necessarily mean that you have the one employer. There are differences there. I hope that that helps.
1679. **Mr Mitchel McLaughlin:** It does. It is a logical enough argument, but what we have with the firefighters is a kind of interface between the normal pension age and the state pension age, and then the additional requirement of an operational fitness threshold. They are between a rock and a hard place. I think that we could probably find a solution to that if we went looking, rather than just saying to people, “Take your oil. You can have a particular pension and go, or you can —”.
1680. **Ms Coyle:** It is all down to the competencies for the posts. The competencies for the posts in the

- likes of the Fire Service or for prison officers are more specific than the competencies for the general service grades in the public service. Therein lies the problem.
1681. **Mr Mitchel McLaughlin:** Would retraining operations not be offered? We offered them to retired police officers at the time of the police transition.
1682. **Mrs G Nesbitt:** Organisations can do that, and they have done. Other organisations do that where they may face a reduction in the workforce or are undergoing change. They look at how they can do things to benefit their staff and equip them for other occupations or opportunities. However, if we try to work through the logistics of that, the difficulty is this: would we say, “Mr, Mrs or Miss, you are no longer fit be a firefighter, so we’re going to move you to work in the Civil Service”? They might not want to do that. If they did, how would that square with the appointment on merit principles for the Civil Service and the rules and regulations in our employment law requirement. Even though we are talking about public service pension schemes, we have a myriad of employers who are employers in their own right in how they bring people into their organisation through recruitment. Certainly, if somebody left the Fire Service, they could apply and join the Civil Service. Firefighters work elsewhere in the public service. They work at airports, which are a very obvious example, but it is an operational one. They might move into areas of health and safety as well.
1683. **Mr Mitchel McLaughlin:** Yes, and fire safety advice.
1684. **Mrs G Nesbitt:** They can do that with other parts of the public service; indeed, other private sector companies do it as well. So, they still have skills and competencies that they could apply, and that, in my view, would be transferable. I say that from what I know of the Fire Service and what it does, as well as from colleagues and friends who work in it. To have that as a mandatory provision could get very difficult. Northern Ireland is a very small place. The public service is not an employer; we have a number of employers.
1685. **Mr Mitchel McLaughlin:** Perhaps we are flogging this, but, presumably, there is annual statistical evidence going back over a number of years of how many firefighters reach the point where they cannot match the operational fitness requirements. That kind of statistical information would be helpful.
1686. **Mrs G Nesbitt:** If the Chair were agreeable to this, you could add that into your request to the Department of Health, Social Services and Public Safety. I am conscious that I am not giving you many answers this morning, Mr McLaughlin, but I do not have that information.
1687. **Mr Mitchel McLaughlin:** That is fair enough.
1688. **Mrs G Nesbitt:** I think that it would be helpful to the Committee to have the number of firefighters who have met, or have failed to meet — whatever way you wish to word it — the capability assessments over the years. However, I do not have that information.
1689. **Mr Ball:** It could become easier in the future. I think that one of the recommendations of Williams was to have common fitness standards across all the Fire Services and a common means of assessing them. There was also a suggestion to tell new recruits of the requirement for fitness and the implications of not maintaining their fitness. I think that it will probably be easier to provide those figures in the future. It is a time of change for some.
1690. **Mrs G Nesbitt:** You could still look at it retrospectively.
1691. **Mr Mitchel McLaughlin:** I expect that there is some kind of data available that would help us with this. It might not be as big a problem as it sounds.
1692. **Mrs Smyth:** We should also note that the framework Bill is not proposing a different pension age to what was

brought in in 2006. Age 60 is something that they are managing.

1693. **Mr Mitchel McLaughlin:** I am aware of that. However, neither does it address that particular interface that I just described.
1694. **Ms Coyle:** For clarity, are you also looking for statistical information on the prison officers in the Civil Service scheme?
1695. **Mr Mitchel McLaughlin:** No, I suppose that I am anticipating that we are going to hear from them at some stage. I think that, if we focus on the specific evidence that the firefighters presented, it might provide some kind of template for dealing with other issues that may arise but that have not been presented to us so far.
1696. **The Chairperson:** OK, members. Thanks, Grace.
1697. **Mrs G Nesbitt:** We were planning to sit on, if you were going to consider this issue further. Is that acceptable, or would you rather that we left?
1698. **The Chairperson:** I was going to say that it is a free country, but there may be different views about that. *[Laughter.]*
1699. **Mrs G Nesbitt:** I could not comment on that. If anything arises, I am certainly willing to come back to the Table, if that helps.



# 13 November 2013

## 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*  
 Mrs Grace Nesbitt        *and Personnel*

1700. **The Chairperson:** I ask the Clerk to speak to the secretariat paper.

1701. **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.

1702. 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.

1703. 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.

1704. 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.

1705. 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.

1706. 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.

1707. **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.”*

1708. **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”.*

1709. 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.

1710. **The Chairperson:** Do members have any questions on that? No.

1711. **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”.*

1712. 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”*

1713. **That is a little bit broader again.**



1714. **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.
1715. **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.
1716. **The Chairperson:** Grace, do you want to come forward and give us your view on it?
1717. **Mr Mitchel McLaughlin:** You could phone a friend.
1718. **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.
1719. **Mr Mitchel McLaughlin:** I have it here.
1720. **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.
1721. 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?
1722. **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.
1723. **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.

1724. **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.

1725. **The Chairperson:** OK, members, are we content to take clause 13 forward?

*Members indicated assent.*

1726. **The Chairperson:** Clause 24, as well. Any particular comments initially?
1727. **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.

1728. **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?

1729. 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.

1730. **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.

1731. **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.
1732. 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.
1733. **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?
1734. **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.
1735. **The Chairperson:** You think you do, or you do?
1736. **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.
1737. **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 —
1738. **Mrs G Nesbitt:** It was a legal definition.
1739. **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.
1740. **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”*
1741. 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”.*
1742. 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,”*
1743. 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”.*

1744. 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).”*

1745. we could drop:

*“(for example, in relation to injury or compensation benefits).”*

1746. It would make quite specific the protections or entitlements that scheme members would be concerned about.

1747. 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.

1748. **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”.*

1749. 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”.*

1750. 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 —

1751. **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 —

1752. **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 —

1753. **Mr Mitchel McLaughlin:** I see that you have lifted the words.

1754. **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”.

1755. **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.

1756. **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.”*

1757. Option B states:

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

1758. 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 than what is in clause 23.

1759. **Mr Mitchel McLaughlin:** I prefer option B. It lets people understand exactly what would be considered in any decision.

1760. **The Chairperson:** Members, are there any views on Mitchel's proposal?

1761. **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.

1762. **The Chairperson:** Are there any views from the officials?

1763. **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.

1764. **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.
1765. **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.
1766. **Mrs G Nesbitt:** The cost cap measures for it and control would be going forward. There is no intention that that would be retrospective.
1767. **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”.*
1768. 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”.*
1769. 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.
1770. **Mrs G Nesbitt:** I thought that Mr McLaughlin was proposing to take out “the authority”, but maybe I misheard you on that.
1771. **Mr Mitchel McLaughlin:** I did argue that.
1772. **Mrs G Nesbitt:** I should not have reminded you.
1773. **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.
1774. **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.
1775. **The Chairperson:** OK, members, how do you want to take this forward? Mitchel, do you want to put forward your proposal?
1776. **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”.*

1777. **The Chairperson:** OK, members, I will put that to a vote.

1778. **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?

1779. **Mr Mitchel McLaughlin:** Would that not then enable the provision in respect of affirmative as opposed to negative resolution?

1780. **The Clerk of Bills:** Yes, that is what it —

1781. **Mr Mitchel McLaughlin:** That is the effect of that change. So, the answer to your question is that the Assembly would decide.

1782. **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”.*

1783. 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 —

1784. **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 —

1785. **The Clerk of Bills:** It does, yes.

1786. **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.

1787. **The Clerk of Bills:** I wonder whether what you are looking for is really more akin to option A.

1788. **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.

1789. **Mrs Marsh:** The point was on the technical aspect of pinpointing the body that would make that determination.

1790. **Mr Mitchel McLaughlin:** I appreciate that and the advice.

1791. **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?

1792. **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.

1793. **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”.*

1794. **Mr Mitchel McLaughlin:** It would continue:
- “in relation to the pension payable ... in any other way in relation to members of the scheme”.*
1795. **Mr Cree:** Surely it should be “an” adverse effect not “any”.
1796. **The Clerk of Bills:** It is a question of choice, really. There are alternative ways to draft.
1797. **Mr Cree:** There are two very woolly variables in one sentence.
1798. **Mr Mitchel McLaughlin:** You are going to add another one.
1799. **Mr Cree:** “An” is more specific.
1800. **Mr Weir:** What if it has two adverse effects?
1801. **Mr Mitchel McLaughlin:** “An” would apply to both individually. I will accept the suggestion.
1802. **The Clerk of Bills:** It could be said that “any” is more emphatic.
1803. **Mr Cree:** We could argue about it for another hour.
1804. **Mr Mitchel McLaughlin:** Yes, and the lawyers could argue about it for longer than that as long as they were getting paid.
1805. **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.*

1806. **The Chairperson:** Members, we move to clause 9.
1807. **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.”*

1808. The Department’s response is included in the paper. Chair, I do not know whether officials want to speak on that response.
1809. **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.
1810. **The Chairperson:** Do members have any views on this?
1811. **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.
1812. **The Chairperson:** Do members wish to pursue an amendment in regard to that?
1813. **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.
1814. **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.

1815. **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.
1816. **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.
1817. **The Chairperson:** If members have no proposals for amendments, are they content with the clarification?
1818. **Members indicated assent.**
1819. **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.
1820. **The Chairperson:** Are members content with that?
1821. **Members indicated assent.**
1822. **The Chairperson:** I thank the officials again for their advice. We will see you again next week, will we?
1823. **Mrs G Nesbitt:** Yes, or the week after. We will be getting loyalty points.



## 20 November 2013

### Members present for all or part of the proceedings:

Mr Dominic Bradley (Deputy Chairperson)  
 Ms Megan Fearon  
 Mr Paul Girvan  
 Mr John McCallister  
 Mr Ian McCrea  
 Mr Mitchel McLaughlin  
 Mr Adrian McQuillan

### Witnesses:

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

1824. **The Deputy Chairperson:** Are members content to proceed to the formal clause-by-clause consideration of the Bill?  
*[Interruption.]* I am sorry; you do not have any speaking rights. *[Interruption.]* I will adjourn the meeting.

*The Committee suspended at 11.57 am and resumed at 11.59 am.*

*On resuming —*

1825. **The Deputy Chairperson:** Members, we will resume the meeting. Thank you all for your cooperation during that brief interruption.

1826. We will now begin the clause-by-clause scrutiny of the Bill. This session will be recorded for the Hansard report. Therefore, all electronic devices, with the exception of Committee tablets, must be switched off while the Committee is in session, otherwise they may interfere with the transmission and recording of proceedings. I refer members to the updated secretariat paper, which has been tabled, to assist with the clause-by-clause decisions. It has been updated from the version in the packs to take account of Department of Finance and Personnel (DFP) undertakings to table amendments to clauses 5, 12 and 14. An updated table of issues from the evidence can be found in the Committee meeting pack, along with a copy of the Bill. We will now go to the secretariat paper.

### Clause 1 (Schemes for persons in public service)

1827. **The Deputy Chairperson:** The clause contains the enabling power for new public service pension schemes and schemes providing other benefits, such as injury and compensation benefits, that are made under the Bill. The Committee and the Northern Ireland Committee, Irish Congress of Trade Unions (NIC-ICTU) raised an issue in respect of the clause, to which DFP responded. That can be found in the table of issues in the meeting pack.

*Question, That the Committee is content with the clause, put and agreed to.*

### Clause 2 (Responsible authority for schemes)

1828. **The Deputy Chairperson:** The clause enables the Departments listed in schedule 2 to make scheme regulations for the main categories of persons in public service. The Committee and the ICTU raised an issue in respect of the clause to which DFP responded. That is in the table of issues.

*Question, That the Committee is content with the clause, put and agreed to.*

### Clause 3 (Scheme regulations)

1829. **The Deputy Chairperson:** The clause contains additional provisions about how the power to make scheme regulations under the Bill may be used. NIC-ICTU, the British Medical Association (BMA) and the Northern Ireland Human Rights Commission (NIHRC) raised issues in respect of the clause to which DFP responded. That is in the table of issues.

*Question, That the Committee is content with the clause, put and agreed to.*

### Clause 4 (Scheme manager)

1830. **The Deputy Chairperson:** The clause makes provision for public service

pension schemes to have a scheme manager who is to be responsible for managing or administering the scheme. The Committee and the BMA raised issues in respect of the clause to which DFP responded. Information on that can be found in the table of issues.

*Question, That the Committee is content with the clause, put and agreed to.*

#### **Clause 5 (Pension board)**

1831. **The Deputy Chairperson:** The clause requires schemes to provide for the establishment of a pension board to assist the scheme manager with certain matters. NIC-ICTU, the National Association of Schoolmasters Union of Women Teachers (NASUWT) and the Northern Ireland Local Government Association (NILGA) raised issues in respect of the clause to which DFP responded. The information is in the table of issues in your meeting packs.
1832. **Mr Girvan:** Chair, can we agree with the amendment?
1833. **The Deputy Chairperson:** I would add that, arising from the Committee's scrutiny relating to NILGA's concerns, the Department has agreed to table an amendment to replace "must" with "may" in clause 5(2).
1834. **Mr Girvan:** With the Committee's agreement, I think that we should agree to the amendment to change "must" to "may" in clause 5(2).
1835. **The Deputy Chairperson:** Are you in agreement?
1836. **Mr Girvan:** Yes.

*Question, That the Committee is content with the clause, subject to the proposed amendment, put and agreed to.*

#### **Clause 6 (Pension board: information)**

1837. **The Deputy Chairperson:** The clause requires the scheme manager to publish information about the pension board for the scheme or schemes. No issues were raised in the evidence about the clause.

*Question, That the Committee is content with the clause, put and agreed to.*

#### **Clause 7 (Scheme advisory board)**

1838. **The Deputy Chairperson:** The clause requires schemes to provide for the establishment of a scheme advisory board to advise on certain matters. NIC-ICTU, the NASUWT and NILGA raised issues in respect of the clause to which DFP responded. The information is in your meeting packs.

*Question, That the Committee is content with the clause, put and agreed to.*

#### **Clause 8 (Types of scheme)**

1839. **The Deputy Chairperson:** The clause sets constraints on the design of schemes, including requiring defined benefit schemes to provide those benefits through a career average revalued earnings (CARE) scheme or such other description of defined benefit scheme as DFP may specify in regulations but not a final salary scheme. NIC-ICTU and the NASUWT raised issues in respect of the clause to which DFP responded. Again, the information is in the table of issues in your meeting packs.

*Question, That the Committee is content with the clause, put and agreed to.*

#### **Clause 9 (Revaluation)**

1840. **The Deputy Chairperson:** The clause provides for the revaluation of pensionable earnings of a person in a CARE scheme in accordance with changes in prices or earnings as set out in an annual order made by DFP. The Committee, NIC-ICTU and the NASUWT raised issues in respect of the clause to which DFP responded. Is the Committee content with clause 9?
1841. **Mr Mitchel McLaughlin:** The Committee divided on this last week. I think that my party is still not content to be part of a unanimous decision. I also think that we would reserve our position until Consideration Stage. However, I do not want to divide the Committee.

1842. **Mr Girvan:** If you want to table an amendment, you can do so at that stage.

1843. **Mr Mitchel McLaughlin:** I can; that is right.

1844. **The Deputy Chairperson:** As I said at the outset, members are free to reserve their position on any of the clauses and to table amendments at Consideration Stage.

1845. **Mr Mitchel McLaughlin:** To allow you to proceed, Chair, I will reserve my position on the clause.

1846. **Mr McCallister:** Likewise.

1847. **The Deputy Chairperson:** OK. Thank you.

**Clause 10 (Pension age)**

1848. **Mr Girvan:** Chair, there is really only one area of the clause about which I have concern.

1849. **The Deputy Chairperson:** Can we wait until we deal with the formalities of putting the clause to the Committee?

1850. Clause 10 contains requirements relating to the normal pension age of schemes made under the Bill, including linkage with the state pension age in most cases. The Committee, the Fire Brigades Union (FBU), NIC-ICTU, NASUWT and NIHRC raised issues in respect of the clause to which DFP responded. Responses were also sought from the Office of the First Minister and deputy First Minister (OFMDFM) and the Health Department, which were referred to earlier. Is the Committee content with clause 10?

1851. **Mr Girvan:** My issues with clause 10 are similar to Mitchel's concerns about clause 9. My party will consider whether to table an amendment at Consideration Stage.

1852. **Mr McCallister:** Likewise, Chair. It might be useful if we could agree a Committee amendment for Consideration Stage.

1853. **Mr Girvan:** I am looking at only one area.

1854. **The Deputy Chairperson:** Can members indicate whether they want to speak?

1855. **Mr Mitchel McLaughlin:** I suggest to you, Chair, that, in the interests of saving time, we record that there is no agreed Committee position on the issue.

1856. **The Deputy Chairperson:** Yes. John, do you want to speak on this?

1857. **Mr McCallister:** I am content with that. I would like it if we could, at some point, agree an amendment. That would be useful. Our concerns about the clause are probably all the same, so it might be useful if we could get a Committee amendment before Consideration Stage, if that is possible.

1858. **The Deputy Chairperson:** Thanks, John. For the sake of the minutes, can I clarify with you, Paul, that you are referring to clause 10 and not to clause 9?

1859. **Mr Girvan:** Clause 10.

1860. **The Deputy Chairperson:** Thank you. Do you want to say something additional?

1861. **Mr Girvan:** No. I agree with what John just said. It would be better if we could come forward with an agreed approach. However, to allow us to move forward, we will take Mitchel's form of words.

1862. **The Deputy Chairperson:** I take it that all parties, including mine, are adopting a reserved position on the clause and that parties intend to work together to formulate an agreed amendment to it at Committee Stage?

1863. **Mr Girvan:** I think that an agreed amendment would be the right way forward.

1864. **The Deputy Chairperson:** If possible.

1865. **Mr McCallister:** All this harmony will never catch on.

1866. **The Committee Clerk:** Is the Committee content that the record states that the Committee did not agree clause 10 at this stage?

*Members indicated assent.*

### **Clause 11 (Valuations)**

1867. **The Deputy Chairperson:** The clause requires that defined benefit schemes be actuarially valued in accordance with DFP directions. The Committee, the BMA and NIC-ICTU raised issues in respect of the clause to which DFP responded. The information is in the table of issues in your meeting packs.

*Question, That the Committee is content with the clause, put and agreed to.*

### **Clause 12 (Employer cost cap)**

1868. **The Deputy Chairperson:** The clause requires scheme regulations for defined benefit schemes to set an employer cost cap. It sets out how that cap should be set, measured and operated. The Committee, the BMA and NIC-ICTU raised issues in respect of the clause to which DFP responded. Following the concerns that the Committee raised, the Department has agreed to table an amendment to clause 12 to make the direction and regulation-making powers subject to consultation.

1869. Is the Committee content with clause 12, subject to the Minister tabling an amendment at Consideration Stage undertaking to include further provisions to the fact that DFP directions and regulations may be made only after DFP has consulted with the relevant stakeholders?

*Question, That the Committee is content with the clause, subject to the proposed amendment, put and agreed to.*

### **Clause 13 (Employer contributions in funded schemes)**

1870. **The Deputy Chairperson:** The clause provides for the setting of the employer contributions rate in defined benefit schemes with a pension fund, most notably the funded local government pension scheme Northern Ireland. The clause requires an actuarial valuation of the pension fund to inform the setting of the employer contribution rate and makes provision for the valuation to be reviewed. At its meeting on 13

November, the Committee agreed to table the following amendment:

*"In clause 13, page 9, line 20*

*After 'Qualified' insert —*

*'and must not be —*

*(a) an employee of the responsible authority;*

*(b) the scheme manager;*

*(c) a scheme manager; or*

*(d) an employee of the Department of Finance and Personnel."*

*Question, That the Committee is content with the clause, subject to the proposed amendment, put and agreed to.*

### **Clause 14 (Information about benefits)**

1871. **The Deputy Chairperson:** The clause provides for scheme regulations to require scheme managers for defined benefit schemes under clause 1 to provide active pension scheme members with benefit information statements in accordance with the requirements of the clause. The Committee and the NIC-ICTU raised issues in respect of the clause to which DFP responded. The Committee identified a typographical error in subsection (1) at line 24 and has agreed to table an amendment to address that. Is the Committee content with the clause, subject to the Minister tabling an amendment at Consideration Stage undertaking to insert in line 24 the word "a" after the words "which is"?

*Question, That the Committee is content with the clause, subject to the proposed amendment, put and agreed to.*

### **Clause 15 (Information about schemes)**

1872. **The Deputy Chairperson:** The clause relates to the collection and publication of information about schemes under clause 1. It allows DFP to direct schemes to publish or provide information to DFP and to specify how and when that information is to be published or produced. NIC-ICTU raised issues in respect of the clause to which DFP

responded. The information is in the table of issues in your meeting packs.

*Question, That the Committee is content with the clause, put and agreed to.*

#### **Clause 16 (Records)**

1873. **The Deputy Chairperson:** The clause allows the Department for Social Development (DSD) to make regulations requiring scheme managers of pension schemes made under clause 1 and any connected schemes to keep specified records on, for example, information about contributions due to the scheme. No issues were raised about the clause in the evidence.

*Question, That the Committee is content with the clause, put and agreed to.*

#### **Clause 17 (Regulatory oversight)**

1874. **The Deputy Chairperson:** The clause makes provision about the regulatory responsibility of the Pensions Regulator in relation to the governance and administration of public service schemes made under the Bill, connected schemes and other public service pension schemes. The Committee raised an issue in respect of the clause to which DFP responded. The information is in the table of issues in your meeting packs.

*Question, That the Committee is content with the clause, put and agreed to.*

#### **Clause 18 (Restriction of existing pension schemes)**

1875. **The Deputy Chairperson:** The clause provides that benefits may not be provided under existing pension schemes in relation to service after the closing date for the scheme. Its effect is to bring to an end further accrual of pension benefits in existing schemes, except where transitional arrangements have been agreed to allow those who are closest to retirement to continue to accrue benefits under the scheme. NIC-ICTU raised issues in respect of the clause to which DFP responded. The

information is in the table of issues in your meeting packs.

*Question, That the Committee is content with the clause, put and agreed to.*

#### **Clause 19 (Closure of existing injury and compensation schemes)**

1876. **The Deputy Chairperson:** The clause deals with existing injury and compensation schemes. It permits scheme regulations to provide for the closure or restriction of existing schemes that provide for the payment of benefits relating to compensation for loss of office and injury benefits. No issues were raised in the evidence about the clause.

*Question, That the Committee is content with the clause, put and agreed to.*

#### **Clause 20 (Final salary link)**

1877. **The Deputy Chairperson:** The clause introduces schedule 7, which sets out the final salary link that applies to past service in the final salary schemes restricted under clause 18. No issues were raised in the evidence about the clause.

*Question, That the Committee is content with the clause, put and agreed to.*

#### **Clause 21 (Consultation)**

1878. **The Deputy Chairperson:** The clause obliges the responsible authority to consult those who are likely to be affected before making or changing scheme regulations. The current procedures for making changes to current public service pension schemes vary from scheme to scheme. This Committee and NIC-ICTU raised an issue in respect of the clause to which DFP responded. That information is in the table of issues in the meeting pack.

*Question, That the Committee is content with the clause, put and agreed to.*

#### **Clause 22 (Procedure for protected elements)**

1879. **The Deputy Chairperson:** In this clause, the policy intention is that the reforms

legislated for in the Bill are designed to last for 25 years. The clause specifies enhanced consultation and report procedures for changes to protected elements of a scheme for a period of 25 years. The Committee raised an issue in respect of the clause to which DFP responded. That is in the table of issues in the meeting pack.

*Question, That the Committee is content with the clause, put and agreed to.*

#### **Clause 23 (Procedure for retrospective provision)**

1880. **The Deputy Chairperson:** The clause provides a procedure to be followed when retrospective provisions are included in scheme regulations proposed by the relevant authority. The Committee, BMA, NIC-ICTU and NIHRC raised issues in respect of the clause that DFP responded to. That is in the table of issues in the meeting pack. My party will reserve its position on this until Consideration Stage.

*Question, That the Committee is content with the clause, put and agreed to.*

#### **Clause 24 (Other procedure)**

1881. **The Deputy Chairperson:** The clause sets out the legislative procedures that apply to the making of scheme regulations. A higher level of Assembly scrutiny is required in each case if scheme regulations are used to amend primary legislation or to make retrospective amendments that appear to the responsible authority to have significant adverse effects in relation to members of schemes. The Committee, NIC-ICTU and NASUWT raised issues in respect of the clause that DFP responded to. Information is in the table of issues in the meeting pack. My party may reserve its position on this until Consideration Stage.

1882. **Mr Mitchel McLaughlin:** I have indicated that we will do likewise.

*Question, That the Committee is content with the clause, put and agreed to.*

#### **Clause 25 (Extension of schemes)**

1883. **The Deputy Chairperson:** The clause allows schemes made under clause 1 to be extended to persons who are not in the main categories of persons in public service specified. NIC-ICTU raised an issue in respect of the clause to which DFP responded. That information is in the table of issues in the meeting pack.

*Question, That the Committee is content with the clause, put and agreed to.*

#### **Clause 26 (Non-scheme benefits)**

1884. **The Deputy Chairperson:** The clause allows scheme managers and employers to make payments towards the provision of pensions and other benefits that are not delivered through a scheme made under clause 1 for persons who could have access to such schemes. This will enable employers to contribute to private occupational pension schemes where members of public service schemes wish to take out or retain private occupational pensions in addition to or instead of being members of public service schemes. NIC-ICTU raised an issue in respect of the clause to which DFP responded. That information is in the table of issues in the meeting pack.

*Question, That the Committee is content with the clause, put and agreed to.*

#### **Clause 27 (Consequential and minor amendments)**

1885. **The Deputy Chairperson:** The clause introduces schedule 8, which contains consequential and minor amendments to primary legislation that are required because of the provisions of the Bill. No issues were raised during evidence on this clause.

*Question, That the Committee is content with the clause, put and agreed to.*

#### **Clause 28 (Existing local government scheme)**

1886. **The Deputy Chairperson:** The clause provides for certain regulations made under article 9 of the Superannuation (Northern Ireland) Order 1972 to have



effect as though they were scheme regulations made under clause 1 of the Bill. The clause will apply only to regulations under which benefits are provided to or in respect of service on or after 1 April 2014. It will apply only to regulations that provide for pension benefits in respect of service on or after that date. NIC-ICTU raised an issue in respect of the clause to which DFP responded. That information is in the table of issues in the meeting pack.

*Question, That the Committee is content with the clause, put and agreed to.*

**Clause 29 (Existing schemes for civil servants: extension of access)**

1887. **The Deputy Chairperson:** The clause introduces schedule 9, which amends the Superannuation (Northern Ireland) Order 1972 to extend access to schemes made under article 3 of that order. No issues were raised during evidence on the clause.

*Question, That the Committee is content with the clause, put and agreed to.*

**Clause 30 (New public body pension schemes)**

1888. **The Deputy Chairperson:** In this clause, there are defined benefit schemes for those in public service aside from the main schemes for civil servants, local government workers, health service workers, teachers, police, fire and rescue services and the devolved judiciary. The clause imposes constraints on the design of new pension schemes that may be created under the power in clause 31 for bodies and offices whose pension schemes are restricted for future accrual and whose members cannot join one of the schemes established under clause 1. It also governs the design of pension schemes that are set up in the future or established under future legislation for public bodies, unless future legislation makes specific different provision. NIC-ICTU and the Independent Financial Review Panel (IFRP) raised issues in respect of the clause that DFP responded to. That is in the table of issues in the meeting pack.

*Question, That the Committee is content with the clause, put and agreed to.*

1889. **Mr Mitchel McLaughlin:** We have made our bed, and we will lie in it.

**Clause 31 (Power to restrict other existing public body pension schemes)**

1890. **The Deputy Chairperson:** The clause contains provision for DFP to specify public bodies whose pension schemes would be restricted so that no benefits are provided under the scheme to or in respect of a person in relation to their service in the schemes after a date to be specified. IFRP raised an issue in respect of the clause to which DFP responded. That information is in the table of issues in the meeting pack.

*Question, That the Committee is content with the clause, put and agreed to.*

**Clause 32 (Existing public body pension schemes: pension age)**

1891. **The Deputy Chairperson:** The clause allows an existing public body pension scheme to reform itself by including provision that the normal pension age and deferred pension age of members of those schemes is to be the same as their state pension age — subsection (1)(a). The link may apply only to benefits accrued under the scheme after the provision to establish that link took effect. The Committee and IFRP raised an issue in respect of the clause to which DFP responded. That information is in the table of issues in the meeting pack. Is the Committee content with clause 32 as drafted?

1892. **Mr Mitchel McLaughlin:** Can I just check something? In the notes, it states:

*“This clause requires a commencement order by DFP to take effect. The final date for restriction of public body schemes is not yet determined. The proposed amendment would have the effect of placing a requirement on those schemes to change the current provisions for pension age prematurely.”*

1893. That does not make a lot of sense.

1894. **The Deputy Chairperson:** Are you referring to the actual Bill?
1895. **Mr Mitchel McLaughlin:** I am talking about the departmental response.
1896. **The Committee Clerk:** It is in the table of issues, at pages 103 to 104.
1897. **The Deputy Chairperson:** Can you shed any light on that, Shane?
1898. **The Committee Clerk:** It is just an extract from the DFP response to the issue.
1899. **Mr Mitchel McLaughlin:** OK.
1900. **The Deputy Chairperson:** Are you content, Mitchel?
1901. **Mr Mitchel McLaughlin:** No. I do not have a clue what was left out. I do not know what it means.
1902. **The Deputy Chairperson:** Do you want to reserve your position on that?
1903. **Mr Mitchel McLaughlin:** I do not want to hold things up, but I do not know what we will be agreeing to. I cannot agree to that as it stands, unless somebody can help.
1904. **The Deputy Chairperson:** Do you want me to ask Mrs Nesbitt to elaborate on that point?
1905. **Mr Mitchel McLaughlin:** That is always very helpful.
1906. **Mrs Grace Nesbitt (Department of Finance and Personnel):** Can I bring a friend?
1907. **The Deputy Chairperson:** Yes.
1908. **Mr Stephen Ball (Department of Finance and Personnel):** One of the issues that were discussed during the evidence sessions was whether the clause should be amended to state “must” instead of “may”. I think that we provided clarification. Some schemes will not have to reform by 2015. The clause enables those schemes to have the leeway to reform at a later date, so “must” would be inappropriate in that it would force them to change. The legislation would be dictating that they change even though that is not the policy intention, so “may” was the —
1909. **Mr Mitchel McLaughlin:** I was not querying that. We may have just an extract from a longer response from yourselves. What is missing may or may not be significant, but I am puzzled by its absence.
1910. **Mr Ball:** The correspondence probably proposed, suggested or asked us to give a view on a possible amendment.
1911. **Mr Mitchel McLaughlin:** Do you have the full response in front of you in hard copy? I do not. Do you need me to remind you what it was, if that would help?
1912. **Mrs G Nesbitt:** We responded on 1 November. There is nothing further in the response to what you have there, so there is not a bit missing.
1913. **Mr Mitchel McLaughlin:** To allow things to proceed, we will just reserve our position. We may or may not feel the need to take this matter up at Consideration Stage.
1914. **The Deputy Chairperson:** OK.
1915. **Mrs G Nesbitt:** The question was whether an amendment would be proposed to change “may” to “must”. Our response, put really simply, was no, if that makes it clearer.
1916. **Mr Ball:** I think that the extract refers to the quotation that Grace just gave.
1917. **Mr Mitchel McLaughlin:** OK.
1918. **The Deputy Chairperson:** Thanks, Mrs Nesbitt and Mr Ball.
- Question, That the Committee is content with the clause, put and agreed to.*
1919. **Mr Mitchel McLaughlin:** I will reserve my position.
1920. **The Deputy Chairperson:** Agreed, with reservations noted.

**Clause 33 (General interpretation)**

1921. **The Deputy Chairperson:** The clause contains definitions. No issues were raised during evidence on the clause.

*Question, That the Committee is content with the clause, put and agreed to.*

**Clause 34 (Regulations, orders and directions)**

1922. **The Deputy Chairperson:** The clause sets out the meaning of “affirmative procedure”. Subsection (2) provides that directions given under the Bill by DFP may be varied or revoked. No issues were raised during evidence on the clause.

*Question, That the Committee is content with the clause, put and agreed to.*

**Clause 35 (Financial provision)**

1923. **The Deputy Chairperson:** The clause provides that any expenditure for the provision of pensions or other sums payable to present or former holders of judicial office are to be paid out of money provided by the Assembly. No issues were raised during evidence on the clause.

*Question, That the Committee is content with the clause, put and agreed to.*

**Clause 36 (Commencement)**

1924. **The Deputy Chairperson:** The clause provides for when and how the provisions of the Bill are to come into force. The provisions listed in subsection (1) come into force automatically on the day the Bill is enacted. The Committee raised an issue in respect of the clause to which DFP responded. That information is in the table of issues in the meeting pack.

*Question, That the Committee is content with the clause, put and agreed to.*

**Clause 37 (Short title)**

1925. **The Deputy Chairperson:** This clause states:

*“This Act may be cited as the Public Service Pensions Act (Northern Ireland) 2013.”*

1926. No issues were raised during evidence on the clause.

*Question, That the Committee is content with the clause, put and agreed to.*

**Schedule 1 (Persons in public service: definitions)**

1927. **The Deputy Chairperson:** The schedule provides the definitions of persons in public service. No issues were raised during evidence on the schedule.

*Question, That the Committee is content with the schedule, put and agreed to.*

**Schedule 2 (Responsible authorities)**

1928. **The Deputy Chairperson:** The schedule provides the definition of responsible authorities. No issues were raised during evidence on the schedule.

*Question, That the Committee is content with the schedule, put and agreed to.*

**Schedule 3 (Scope of scheme regulations: supplementary matters)**

1929. **The Deputy Chairperson:** The schedule provides the scope of the regulations by setting out the eligibility and admission to membership. No issues were raised during evidence on the schedule.

*Question, That the Committee is content with the schedule, put and agreed to.*

**Schedule 4 (Regulatory oversight)**

1930. **The Deputy Chairperson:** The schedule provides for regulatory oversight and consequential changes to current affected legislation. No issues were raised during evidence on the schedule.

*Question, That the Committee is content with the schedule, put and agreed to.*

**Schedule 5 (Existing pension schemes)**

1931. **The Deputy Chairperson:** The schedule provides for the affected schemes. No issues were raised during evidence on the schedule.

*Question, That the Committee is content with the schedule, put and agreed to.*

**Schedule 6 (Existing injury and compensation schemes)**

1932. **The Deputy Chairperson:** The schedule provides for the scope of affected schemes. No issues were raised during evidence on the schedule.

*Question, That the Committee is content with the schedule, put and agreed to.*

**Schedule 7 (Final salary link)**

1933. **The Deputy Chairperson:** The schedule provides for persons who remain in an old scheme for past service. No issues were raised during evidence on the schedule.

*Question, That the Committee is content with the schedule, put and agreed to.*

**Schedule 8 (Consequential and minor amendments)**

1934. **The Deputy Chairperson:** The schedule provides for consequential and minor amendments. No issues were raised during evidence on the schedule.

*Question, That the Committee is content with the schedule, put and agreed to.*

**Schedule 9 (Existing schemes for civil servants: extension of access)**

1935. **The Deputy Chairperson:** The schedule amends the Superannuation (Northern Ireland) Order 1972 to extend access to schemes under that order that provide for superannuation benefits for civil servants. No issues were raised during evidence on the schedule.

*Question, That the Committee is content with the schedule, put and agreed to.*

*Long title agreed to.*

1936. **The Deputy Chairperson:** An initial draft of the Committee's report on the Bill to the Assembly will be considered as the next agenda item, with a view to agreeing the final draft report on 27 November, before Committee Stage expires on 29 November. Members may wish to consider whether they have any recommendations or requests

for assurance that they wish to see included in the report.

1937. Consideration Stage is a matter for the Minister to bring forward in line with the requirements set out in Standing Orders. However, DFP has indicated that it will be scheduled for 14 January 2014. Any agreed Committee amendments are required to be tabled in advance of the Consideration Stage. If proposed Committee amendments are agreed, the Bill Office will advise on any minor or consequential amendments that will need to be made at a later date.



Northern Ireland  
Assembly

Appendix 3

# Written Submissions



# TUS Response to Public Service Pension Reform (April 2013)



## **NORTHERN IRELAND PUBLIC SERVICE PENSIONS REFORM**

**Consultation on Proposals to Reform Public Service**

**(DFP Publication 21 January 2013)**

**Response of the TRADE UNION SIDE (TUS)**

**Comprising the 34 Affiliated Unions of the Northern Ireland  
Committee – Irish Congress of Trade Unions (NIC-ICTU)  
and non-affiliated unions**

**April 2013**

## **INTRODUCTION**

1. TUS is the acronym used for the purposes of this submission, standing for 'Trade Union Side'. We have chosen this terminology as the trade unions involved in negotiations on Public Sector Pension Reform comprise more unions than are presently affiliated to the Northern Ireland Committee of the Irish Congress of Trade Unions.
2. Congress represents 34 trade unions in Northern Ireland. These unions are engaged in representing over 250,000 workers who are employed in the full range of economic and social activity in our society. Non-affiliated unions which are represented in these negotiations include the Royal College of Nursing and the British Medical Association.
3. This paper is a composite of the submissions on this issue being submitted on this Bill by individual trade unions. We ask that readers of this submission take the time to read each submission, due to their specific expertise in each of the public sector pensions schemes affected by this proposed legislation. This TUS submission aims to offer a flavour of the views being offered by the trade union on behalf of their members presently in these pensions schemes and, it should be noted, all of those joining the schemes in the coming years and even decades.
4. The numbers affected are substantial. We refer not to the questionable figure of £262 Million 'taken' from the bloc grant (the calculation of which we shall return, but the active, deferred and pensioner members of the six main schemes (for which we have figures).
5. The total membership of the Police Pension Scheme is 19,264 active, deferred and pensioner members.
6. The Local government Pension Scheme (NI) has 95,394 members.
7. The NI Teachers Pension Scheme has 60,393 members.
8. The NI Firefighters Pension Scheme has 2,422 members.
9. The Health & Social Care (NI) Pension Scheme has 101,083 members.
10. The PCSPS (NI) scheme has 68,291 members.
11. The figures above give weight to the argument that this is not legislation which can or should be rushed. One should note also the fact of pensioner poverty in Northern Ireland, summarised in this graphic:





12. The fact that most workers in the private sector do not have adequate (or any) pension provision is not the fault of public sector workers who have decent pensions. Reducing the value of public sector pensions may make some people feel better, but that will hardly improve the lot of anybody. There are, however, households with both public and private sector workers, whose retirement is dependent upon having at least one adequate pension. Trying to justify this move to cut the value of pensions through faked concern for private sector workers is a staple of radio phone-in shows, but it is shallow rhetoric.
13. Pensioners spend their money. As a rule, the 'saving' part of their share of income happens ahead of retirement. Retired people use the reduced income they have in the local economy. Reducing the value of pensions will mean reduced demand for the economy as a whole.
14. Taking a long run macro-economic view, there would also be consequences for the benefits system, as well as reduced taxation receipts from retired people.
15. As will be illustrated in the comments that follow TUS is wholly opposed to the proposed content of the NI Bill. In addition, the Bill needs to be considered in a much wider context with regard to both Public Service Pensions and proposed changes to the State Pension.
16. The change in indexation from RPI to CPI adversely impacts on the value of public service pensions by circa 15%. In addition for the unfunded schemes (all those within the ambit of the Bill except LGPS/NILGOSC) the additional employee contributions are to average out at 3.2% by April 2014. These represent yet further attacks on public sector pensions.

17. The Westminster DWP whitepaper and subsequent draft bill of January 2013, *The Single-Tier Pension: A Simple Foundation for Saving*, has major implications for public service pensions. In particular two aspects;
- (i) the arrangements for increasing the State Pension Age; and
  - (ii) the ending of contracting-out.
18. The comments that follow are based on the structure of the DFP consultation paper of 21/1/13.

### **CONSULTATION DOCUMENT**

19. **Purpose:** TUS does not accept that it is the role of the NI Executive and in particular the NI Assembly to just replicate in full the Westminster Bill. Public Service Pensions are a devolved matter and there is a need to give full and proper assessment to the issues raised in this response and by the NIC ICTU Trade Union Side both in it's engagement with the Assembly DFP Committee and in the meetings with DFP/Sponsoring Departments Officials.
20. **Background: Why are Reforms Needed?:** in 2005 public service unions entered in to negotiations with employers on a scheme-by-scheme basis and agreed certain outcomes for the future of public service pension schemes. In many cases the change either had still to be introduced and/or agreement reached on measures such as "cap and collar". The current Westminster Government reneged on the outcome of those negotiations as soon as it was elected in 2010. TUS, whilst unhappy with aspects of the 2005 changes believes that they provided the basis for fair and sustainable public service pension reform.
21. It is TUS's view that the totality of the changes are not only an attack on public servants but will also seriously damage scheme sustainability. The implications include likely further additional contribution increases, further increases to normal retirement age and yet more diminution of scheme benefits. This will result in greater dependence upon welfare benefits by retired public servants and exacerbate pensioner poverty.
22. Reference is made to the work of the "Independent Public Service Pensions Commission (IPSPC), otherwise known as the Hutton Report. TUS disputes the 'independence' of the IPSPC and would also point out that the Westminster Government interceded on the work of the Commission via the unilateral decision to change indexation to CPI from RPI. The Government also determined at interim report stage to apply the average 3.2% additional contributions, again without any negotiation or consultation.
23. **Managing Pension Costs:** Reference is made to the potential losses to the NI block funding. There is no proper basis or assessment of how the Finance Minister arrived at the quoted £262m figure. What has been made clear by the Finance Minister to his fellow Ministers is that each Stormont Department will

have to fund the 'cost' of not implementing the Reforms from their Departmental budgets. This devolution of responsibility will place ministers under pressure, not alone in respect of this Primary Legislation, but in considering the Secondary Legislation and Regulations for each Scheme.

24. This section at least brings some honesty to the basis for the proposed changes. It identifies that by circa 2060 the GDP costs of public service pensions will fall from 1.5% to 0.9%. This is clearly linked to the proposals for the changes to the state pension with its aim being by 2060 to reduce GDP expenditure on state pensions from 8.5% to 8.1
25. Reference is made to DFP's own "actuarial analysis". If this is the document provided to the NIC ICTU Trade Union Side then TUS disputes the accuracy of the figures. The work done by GAD was predicated on the NI HSC Scheme extrapolated across the rest of the NI Public Service Schemes on a 7% figure. The HSC costing is disputed as it applied a baseline cost of 26% vis-à-vis the published cost figure of 21%. No account was taken of scheme variables across the other schemes such as membership uptake pension values, age profile, the impact of auto-enrolment to list just a few.
26. The unions have pressed for and to date been denied (with the exception of NILGOSC) full scheme triennial actuarial assessments. Costings that can be relied upon can only be so when those assessments are made available.
27. The costs to the NI Block and the cost for social security have not been properly assessed. In particular the wider macro economic impact of increasing the normal retirement age with the resultant reduction in labour market opportunities for the unemployed, school/university leavers and those seeking to return to the labour market has not been researched.
28. **The Bill in Westminster:** At the time of writing, the Westminster Bill has yet to be completed. In the stages to date there have been a number of changes and it remains to be seen as to what the final form of the Bill will be. Given the timeline it is not acceptable to TUS that negotiations on the NI Bill should be shoehorned or truncated in order to meet unrealistic timeframes imposed by the Government at Westminster.
29. **Core Provisions:** As per paragraph 20, the post-2005 outcome addressed these issues and it must therefore be concluded that the intent of the Government is to again attack public servants and make them pay for the wider economic mismanagement of the UK.
30. **CARE:** TUS does not accept that any case has been made to remove the final salary link, it is accepted that some TUS members are already covered by a CARE Scheme i.e. NUVOS PCSPS (NI) members. There are options/solutions that can deal with what are deemed to be excesses in terms of those who enjoy pensions for example that produce annual income into six figures. Such examples should be dealt with by a fairer general taxation regime.

31. **Linking NRA to SPA:** See comments elsewhere in this response as to the need to assess the macro economic impact in Northern Ireland. TUS believes without prejudice that at the very least there is value in establishing a Northern Ireland Review Group, similar to that established for the NHS Scheme to examine the increased NRA for various occupational groups across the Schemes. Another option that should be examined is the flexible decade of retirement, this would allow for people to leave early without actuarial deductions on the basis that going forward others will wish to stay beyond the NRA.
32. **Fair Deal:**  
TUS would wish to see specific mention in the Northern Ireland Bill to an agreement on "Fair Deal". In future Fair Deal would be achieved by members being allowed to stay in their existing public service schemes on first and subsequent transfers to the private sector. TUS sees this as a key protection both to the scheme members and the continuing sustainability of the schemes. 'Fair Deal' is important to scheme members, because it means their pension provision will not worsen if they are outsourced. It is important for the continuing sustainability of the schemes because if large numbers of contributing members are lost to the scheme it means the schemes will become increasingly 'cash poor' with the gap between contributions coming in, and pensions being paid, widening. In addition, for funded schemes it will mean the proportion of younger members against the total membership is likely to decline, with the result that the older profile of the scheme members will mean the cost of the scheme increasing.
33. **Final Salary Link for Accrued Service:** This is not giving anything, these are acquired rights related to pension as deferred pay. It is also the case that to do otherwise would be contrary to the convention on Human Rights as it is deemed that pensions are property and to have any erosion of the acquired entitlement would constitute theft of personal possessions.
34. **Cap/Collar:** TUS does not accept the cost basis of the HMT/GAD model scheme, nor the two papers of November 12 on cap/collar and triennial review mechanics. The cost envelope was worked backwards to suit what Government determined would be the maximum amount it would contribute to the schemes. The impact of breaching the collar will only result in further damage to schemes by increased opt outs as the only two solutions are either reduced benefits and/or further additional employee contributions. An additional issue relates to the correlation between increased NRA and ill-health retirements, these costs should not be included as they relate directly to the Governments decision to both increase NRA and to further link it to increases in SPA.

The cost sharing aspect was one of the post 2005 reforms that discussions had only commenced on within the various schemes.

TUS also has concerns regarding the direction taken on possible closure to existing Injury and Compensation Schemes. We have already set out our

understanding that existing public service schemes should not be closing but would be changed from a scheme change date to reflect the respective scheme specific agreements. We believe the emphasis in this section should be on continuing existing injury allowance arrangements in accordance with the existing scheme regulations.

35. **Protections:** The protections if required as a consequence of the NI Executive/Assembly forcing changes should run for 10 years plus the taper from the implementation date of the revised schemes. De facto they are not 10 year protections given they ran from 1/4/12 yet it is planned that the implementation date is 1/4/15, thus really only 7 year protections (with LCPS/NILGOSC having a proposed 1/4/2014 date).
36. **Governance:** TUS supports the governance arrangements for NILGOSC in respect of scheme oversight/administration. There needs also to be proper negotiating bodies established to deal with scheme regulations, cap/collar, etc. The DOE LGPS/NILGOSC Review Group could form the basis for such scheme specific bodies. In fact, Lord Hutton in his final report recognised member representation on pension fund committees represented best practice and should be introduced.
37. **Twenty Five Year Guarantee:** There is no reference to this in the document yet it is a fundamental tenant of the Government's position, albeit wiped out as a consequence of the Single State Pension proposals.
38. **General NI Position:** It is TUS view that the NI Executive and Assembly should fully exercise its devolved authority on public service pensions. There is no justification to follow the Westminster Bill, especially when predicated upon dubious assumptions as to the NI Block impact.
39. As clearly pointed out pensions are both a negotiable matter and deferred pay therefore the NI Executive had no right to come to a unilateral decision on 8/8/12 without any negotiation or consultation with trade unions and scheme members.
40. The timeline is wholly unacceptable. At 5 April the position for the LGPS England/Wales is still not clear thus making it impractical for NILGOSC changes from 2014. The 2015 date for other schemes is also not viable, given the timeline for the Bill and the need for scheme-by-scheme negotiations on the regulations.
41. No reference has been made to the November 12 HMT Paper on Fair Deal. TUS does not wish to see the Westminster approach being taken, it is TUS's position that full Fair Deal provisions need to be on the face of the Bill.
42. **EQIA Screening:** TUS fully rejects the decision to screen out a full EQIA. It is TUS's view that this is a pre-determined decision to (i) help expedite passage of the Bill and (ii) to deliberately ignore clear equality issues that arise.

For example, a key concern of the Fire Brigades Union (FBU) with the proposed Bill on Public Service Pension Reform is the imposition of a Normal Pension Age (NPA) of 60 for all Firefighters. A recent independent report commissioned by the Westminster Government broadly supports the concerns of the FBU and makes it clear that the majority of current Firefighters will not be fit enough to work to 60. It warns that in such cases, "the only option is to leave or have their contract terminated on capability grounds without early payment of pension."

The report shows that based on actual information from four fire and rescue services that two thirds (66%) of those aged 55-60 are below the recommended fitness standard of 42 mL.kg-1.min-1. Many fire and rescue services' fitness policies, including the one used in Northern Ireland, utilise this recommended fitness level.

It also warns that "It is likely that a substantially larger proportion of women will find it hard to maintain fitness at the required level, leading to a disproportionate number becoming unfit for firefighting before age 60". The FBU is very concerned that the proposed changes will make it difficult, if not impossible to recruit and retain adequate numbers of female Firefighters within the Fire Service. We therefore believe that a full EQIA should be carried out.

43. **Part 1:** TUS contends that the proposals do represent a new policy rather than a change to existing policy. The scale of the changes are so draconian and fundamental to render the new schemes as being incomparable with the current schemes.
44. **Implementation Factors:** As per comments on the consultation document TUS seriously questions the financial analysis of the costings.
45. **Stakeholders Affected:** This is flawed as clearly the proposals impact upon trade unions in the representation of their members rights and entitlements with regard to pensions.
46. **Available Evidence Section 75 Category:** This is a very flawed, incomplete and gross over simplification of the totality of the issues and the inter-relationships between Section 75 categories.
47. **Racial Groups:** There is no evidence of any research into the uptake/opt-out of scheme membership by different racial groups. Pensions are a complex issue and the various proposed changes add greatly to such complexity. It is possible that Racial Groups are more likely to have difficulties understanding and dealing with the complexities around pensions.
48. **Age:** It is clear that the proposals have age implications which need to be fully assessed. All schemes have full age profile data to state age profile is not available for NILGOSC is a clear distortion of the facts. If not then it is a demonstration that DFP did not go looking for the data.

49. **Marital Status:** As with age in respect of the data. In fact all schemes require nomination forms to be completed as well as dependants data to be held.
50. **Men/Women Generally:** Again all schemes have full data sets.
51. **Needs, Experiences and Priorities:** Given the total lack of research and data gathering/analysis it is not surprising such N/A conclusions are drawn. A proper assessment would produce differing results.
52. **Part 2 Screening Questions:** Given the comments on paragraphs 36-47 above TUS rejects the conclusions in respect of the following Section 75 groups in particular; Age, Men/Women and Dependents.
53. **Part 3 Screening Decision:** To rely on the basis that all that is happening is a transposition of the Westminster Bill to Northern Ireland is not acceptable and not a defence against a full EQIA.
54. The FBU have provided evidence with regard to adverse impact on women fire-fighters and the LGPS England/Wales EIA identified equality impact issues.
55. The decision of the NI Executive is not binding as the ultimate authority rests with the NI Assembly in respect of the passage of legislation.
56. The screening is flawed due to the massive evidence/data gaps in spite of the readily available existence of such data.
57. TUS will lodge a complaint to the Equality Commission should a full EQIA not be completed.

## **CONCLUSIONS**

58. TUS, without prejudice to its opposition to the totality of public sector pension scheme reforms and the interface with the proposed revision from April 2016 of the state pension provisions, believes that the decisions of the NI Executive, DFP Minister and DFP Officials are wholly flawed.
59. The comments in this response clearly identify such failings. TUS calls on the NI Executive to scrap the proposals in their entirety.
60. In addition TUS calls on the NI Executive to reopen negotiations to include an examination of the impact of the RPI to CPI indexation change, additional employee contributions and the interface with the state pension proposals.

# FBU Submission Public Service Pensions - April 2013



Established 1918

## The Fire Brigades Union

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12 April 2013

### **RE: FBU SUBMISSION - ICTU RESPONSE TO CONSULTATION ON REFORM OF PUBLIC SERVICE PENSIONS**

A key concern of the Fire Brigades Union (FBU) with the proposed Bill on Public Service Pension Reform is the imposition of a Normal Pension Age (NPA) of 60 for all Firefighters. A recent independent report commissioned by the Westminster Government broadly supports the concerns of the FBU and makes it clear that the majority of current Firefighters will not be fit enough to work to 60. It warns that in such cases, "the only option is to leave or have their contract terminated on capability grounds without early payment of pension<sup>1</sup>."

The report shows that based on actual information from four fire and rescue services that two thirds (66%) of those aged 55-60 are below the recommended fitness standard of 42 mL.kg-1.min-1. Many fire and rescue services' fitness policies, including the one used in Northern Ireland, utilise this recommended fitness level.

It also warns that "It is likely that a substantially larger proportion of women will find it hard to maintain fitness at the required level, leading to a disproportionate number becoming unfit for firefighting before age 60"<sup>2</sup>. The FBU is very concerned that the proposed changes will make it difficult, if not impossible to recruit and retain adequate numbers of female Firefighters within the Fire Service. We therefore believe that a full EQIA should be carried out.

The FBU believe that the evidence supports our concerns that the NPA of 60 is inappropriate.

Yours sincerely

Jim Quinn  
Regional Secretary  
Fire Brigades Union  
Northern Ireland

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<sup>1</sup> Page 123 – 9.1.2 Normal Pension age for Firefighters- a review for the firefighters' pension committee – December 2012 – (Williams review)

<sup>2</sup> Page 138 – 11.5.5 Normal Pension age for Firefighters- a review for the firefighters' pension committee – December 2012 – (Williams review)



# FDA consultation April 2013

## FDA April 2013 Annex

### NI Pensions Bill

This briefing outlines the key areas where the FDA believes changes are necessary to make the proposed NI Bill fit for purpose:

1. Provision for an independent review of the SPA link;
2. Provision to ensure maintenance of membership in public service pension schemes for transferred workers;
3. Removal of the right for Treasury to reduce accrued benefits (make retrospective changes);
4. Removal of the provision for 'negative revaluation' of CARE;
5. Introduction of the new scheme by amendment to current regulations rather than 'closure';
6. Improvement to the rights to consultation and consent to reflect current provisions in Superannuation Act 1972;
7. Removal of the clause (23 in the Bill as introduced) that allows employers to bypass public service pension schemes altogether;
8. Removal of Treasury control over all elements of schemes without requirements for proper consultation and very little Parliamentary scrutiny.

#### **1. Provision for an independent review of the link between NPA/DPA and SPA**

In his extensively cited report, Lord Hutton stated (Recommendation 11) that the link between receipt of unreduced benefits on retirement – the Normal and Deferred Pension Ages – and State Pension Age should be regularly and independently reviewed to ensure the link is appropriately tracking changes in longevity (Final Report 4.20). This provision also forms an explicit part of the Agreement reached over the Civil Service Pension Scheme changes.

This review is not provided for in the Bill which could well mean that the viability of schemes and the efficiency of provision is put under threat through adherence to a fixed link. If longevity does not match the changes to SPA that result from the other reforms government have signalled, then there are substantial consequences for the cost of schemes. Whether this cost volatility is borne by taxpayers or scheme members, the inadvertent impact could be devastating for the new schemes. An independent review, as recommended by Lord Hutton could ensure that the intention of the provision (for pension age to increase as longevity improves) is actually delivered.

#### **2. Provision to ensure maintenance of membership in public service pension schemes for transferred workers**

The Chief Secretary has committed to both the retention of the current 'Fair Deal' provisions that provide some protection for public sector workers who are outsourced, and the extension of these provisions to all transferring staff. The Bill enables this to occur in the Civil Service

(Schedule 9) but there is no provision giving legislative certainty to the Chief Secretary's commitment.

The FDA believes it is appropriate for this commitment to be on the face of the bill by means of a clause setting out that all compulsorily transferred staff will retain membership of their public service pension scheme. The exact mechanism to deliver this can then be a matter for scheme regulations as would be expected in an 'Enabling Bill'.

### **3. Removal of the right for Treasury to reduce accrued benefits (make retrospective changes)**

In facilitating the ability of scheme regulations to make retrospective changes, the Bill threatens to override one of the central tenets of pension saving: that what you've accrued is safe. This is embodied in s67 Pension Act 1995 for private sector pension savers but protection for public service workers comes from the European Convention on Human Rights. The Explanatory Notes to this clause suggest that its purpose is to allow scheme regulations to be altered retrospectively in the interest of efficient implementation where provision couldn't be made in a timely manner. If that is the case then this clause should more accurately reflect the stated intention. The wording of other clauses (in particular s20) indicates that in fact this power is deliberately broad intended to allow any change to scheme members' past or future benefits.

While the Explanatory Notes suggest that the Bill sets out a high hurdle to further radical change consistent with the Chief Secretary's statement to the House on 20th December 2011, the reality is that the protection only extends as far as requiring consultation with a view to reaching agreement and a report in certain circumstances to be placed in the House. This in no way precludes radical changes to schemes in the context of the employer cost cap [s11] which has a blanket exemption from even these minimal provisions [s20(6)]. In drafting the provisions in this clause relating to retrospective changes may have been inserted in order to allay the concerns discussed in Clause 3 above. However, the provisions are very weak and do not actually result in a 'high hurdle' for changes. As a basic concern, the provisions do not cover what could be radical changes to the schemes such as definitions of pensionable pay, eligibility or survivor benefits. In order to set a higher barrier, the Bill should replicate the strength of provision used to preclude the introduction of final salary schemes [s7(3)].

There is clear provision in the Bill to allow scheme regulations to provide for the reduction of accrued benefits as part of the employer cost cap. This is a fundamental breach of scheme members' rights under Article 1 Protocol 1 of the ECHR. Pensioners in receipt of their public service pensions could also have their benefits reduced leaving them reliant on state benefits regardless of the fact that they will have paid all the employee contributions required of them while in the scheme. The Bill does not stipulate that it is only active or active and deferred members' benefits that can change, use of 'members' applies to all members of a section 1 scheme.

### **4. Removal of the provision for 'negative revaluation' of CARE**

The wording of the Bill does not reflect the discussions with unions on revaluation and seeks to extend Treasury's control far beyond that which is necessary, prudent and, in light of *FDA and Others -v- The Secretary of State For Work and Pensions and Others* [2012] EWCACiv 332, legal.

There is no need for this clause to be in primary legislation as it is better suited to the scheme regulations that will lay down the parameters of each distinct scheme. There is no similar clause setting the terms of the indexation of pensions in payment even though that element is consistent across all schemes.

Fundamental to the agreement reached in the Civil Service was the understanding that, as with the indexation of pensions in payment, revaluation would never be negative. If the relevant index was negative (as has been the case in recent history) then the figure of zero

is used and there are no increases, or decreases, applied. This is vital to the confidence of pension saving. Just as pensions in payment should not fall from one year to the next – a principle held to be successive governments – so pensions being accrued should similarly not be reduced. This reflects the existing practice for nuvos – the current CARE scheme in the Civil Service where revaluation either involves an increase if CPI is positive or a freeze if CPI is zero or below. The FDA were not informed at any stage that government intended to deviate from this approach in the new scheme and to do so now is a fundamental challenge to our members' agreement.

Continued inclusion in the Bill of a provision allowing negative revaluation to occur could have a profound effect on member behaviour, specifically opt outs. Scheme members are likely to react to an announcement that their whole pension is to be revalued downwards (ie cut) as a result of a negative figure for the consumer price index in September. Their response is likely to be one of mass opt out. This is a hugely counter-productive approach for Treasury to take on the pretext of 'sharing risk'. The cost management mechanisms already account for inflation yet Treasury wants additional cost to be accepted by members through this provision which puts participation at risk.

## **5. Introduction of the new scheme by amendment to current regulations rather than 'closure'**

There remains a serious lack of clarity on how this clause (s16) is to operate. It appears that all members of existing pension schemes will be deferred albeit with a provision for a final salary link described in Schedule 7. This would cause significant communications problems (telling members they are being thrown out of the scheme they have been saving in, potentially for decades). It also raises questions about HMRC rules on benefit crystallisation as well as concerns over the calculation of transfer values, access to accrued rights in ill health, redundancy or other early retirement and the provision of benefits to survivors in the event of a member's death. None of these issues have been discussed or appear to be considered in the drafting of this Bill.

An alternative approach that has been suggested is that instead of becoming deferred, active members of existing schemes will remain active members of those schemes but will not build up any more service and will not contribute to those schemes. They will however, also be active members of the new schemes into which their contributions will go. Many of the issues set out above would still apply in this situation.

Treasury has sought to clarify the situation in debate but this is not sufficient security for members. The practical considerations of this approach for continuity of service and contractual arrangements continue to be undiscussed.

## **6. Improvement to the rights to consultation and consent to reflect current provisions in Superannuation Act 1972**

The obstacles to making radical, adverse changes are actually weaker in this Bill than currently exist in the Civil Service and some other public service schemes where s2(3) and s12 of the Superannuation Act 1972 require consent from members for such detrimental changes. Government are removing those provisions and introducing lesser protections which amount to little more than an obligation to inform.

This runs contrary to the pronouncements of the Chief Secretary and others who have stated that a 'high hurdle' is to be put in place by this Bill to further radical change for 25 years.

## **7. Removal of the clause (23 in the Bill as introduced) that allows employers to bypass public service pension schemes altogether**

This clause opens the door for employers to bypass public service pension schemes completely. Simply by citing this clause any employer who would otherwise have to provide access to a s1 scheme could, it appears, decide to choose to make other provision, for

example the basic auto-enrolment level defined contribution provision outlined in Pensions Act 2011.

There is no obvious need for this provision, if it is to address a particular anomaly, then it would seem more sensible to address those issues directly. As currently set out this clause seems to allow departmental discretion for departments to create individual remuneration packages for employees which are neither consistent with other civil servants nor transparent to the public.

**8. Removal of excessive Treasury control over all elements of schemes from valuations to all scheme regulations without any requirements for proper consultation and very little Parliamentary scrutiny**

The Bill effectively takes away the ability of the Secretaries of State responsible for schemes – the ‘responsible authorities’ to manage the valuations of their schemes. All relevant parts of a scheme valuation are to be aligned with whatever Treasury deems appropriate, irrespective of the specific sensitivities of the scheme.

The agreement reached in the Civil Service scheme stipulated that it would be the Minister for the Civil Service who would determine the assumptions for the valuation in that scheme, in conjunction with the governance group of the scheme, Treasury and GAD. The Bill does not allow that agreement to be honoured.

The extension of control gives Treasury (and the Department of Finance and Personnel in Northern Ireland) a far greater role in the running of all public service pension schemes. This extra layer of bureaucracy above that of the schemes’ sponsoring departments will restrict the responsiveness of the schemes – as all amendments will have to receive Treasury consent. Secondly this undermines the consultation requirements set out in Clause 20 in the Bill as introduced. There is little point in ‘Responsible Authorities’ i.e. Cabinet Office for the PCSPS, consulting on changes to scheme regulations if the Treasury is the department that actually determines what scheme regulations are made.

The FDA believes it is still possible for the proposed NI Bill to be amended in order to enable scheme regulations to be produced implementing the agreed scheme reforms to the Civil Service Pension Scheme.

# INTO Public Service Pensions Reform (2)

## Northern Ireland Public Service Pensions Reform

### Consultation on proposals to Reform Public Service Pensions from April 2015

#### Response by the Irish National Teachers` Organisation (INTO)

April 2013

#### Preamble

The Irish National Teachers` Organisation (INTO), is the largest teaching union in Ireland and presently represents around 7000 teachers in all educational sectors in Northern Ireland. INTO has over the past number of years made various interventions and representations on the issue of public sector and teacher pension reform. As such we welcome the opportunity to respond to the consultation exercise given that the funding mechanism is pivotal to ensuring the ensuring a viable and committed public sector as well as a teaching profession who feel valued and supported by the NI Assembly.

#### Introduction

The public sector in Northern Ireland remains significant in the sustaining of employment for a large section of the population. Despite the executive's commitment to rebalance the economy and shrink the size of the public sector and grow the private sector little has been achieved and there is no sign of real economic growth which would entice or encourage such a rebalancing/

Therefore INTO on a global level would be concerned that reductions in the benefits or remuneration available to public sector workers will cause lasting damage to the NI economy as well as moving more individuals into the "poverty trap". It is also disappointing that to date the NI Executive has done nothing to dissuade or refute the idea that public sector workers, including teachers are in receipt of "gold plated" pensions and benefits. INTO strongly refutes this perception and we feel that the onus must be on government to support its workforce rather than let them be the victim of media misinformation.

Finally, INTO must express concern that the NI Executive has continually followed the recommendations of the UK Government with regard to pensions. This legislation and others in the pipeline offer the ideal opportunity to achieve balanced and workable solutions which would benefit the NI economy and the public sector workforce. To squander that opportunity at this time is an opportunity that will be lost and generations will pay the price for these proposed reforms. .

With regard to the matters highlighted in the consultation, INTO would respond as follows:

#### **1. A move to a Career Average Revalued Earnings (CARE) scheme model of pension saving**

INTO remains concerned about this move to a Career Average Revalued Earnings (CARE) pension schemes. They are designed to provide generally lower pensions than traditional final-salary schemes. We have closely examined figures produced into these schemes and

they do offer significantly lower benefits at retirement including loss of a tax free lump sum, supposedly offset by a change in contribution rate from 1/80th to 1/60th. such pension loss will have an overall impact on the employee and may increase their reliance on state benefits as they move closer into poverty.

To protect the accumulating pension against inflation, each individual's notional pension has to be uprated each year. The annual uprating might be in line with inflation (based on the Retail Prices Index or the generally lower Consumer Prices Index) or it might be in line with earnings growth. However it is also accepted that movement to CPI has further detrimentally impacted on current public sector pensions and INTO considers that this CPI approach coupled with the revised scheme is a double blow to those employees on their retirement.

Recently the UK Government has commented on the proposal to not allow automatic salary increases for public sector workers unless based on performance. For people who don't get pay rises on promotion, career average benefits that are uprated with average earnings growth will be no less valuable than a final salary scheme. However this recommendation on public sector salaries must be clarified by the NI Executive if any benefit is to be realised.

Another important factor at the discretion of those designing the scheme, in this case the government, will be the extent of inflation-proofing once a pension is in payment. There is no specific detail as to the level of protection to be offered by the NI Executive and this must be set realistically given the high level of inflation and the present Treasury forecasts regarding inflation and economic growth. INTO will not accept a pay reduction through the use of low levels of pension protection. It is accepted that the greater the protection, the more expensive the scheme will be, and the higher the contributions that will be required. However if the workforce is to be valued then this is a cost that must be met.

Other elements contributing to the cost of a career average scheme will be the extent of other features, such as a pension or other benefits for dependents, spouses and partners, both before retirement and after. INTO are concerned at the degree to which the proposals require further detailed announcements by government and negotiation, scheme by scheme,

Career average schemes are very different to final-salary schemes, despite the continued practice of describing both of them as "defined benefit" schemes INTO feels that it would be much better to describe career average schemes as undefined benefit schemes.

When compared to the final-salary scheme it is proposed to replace, no public sector worker will be better off and almost no-one will be able to accrue a higher pension than before. Many members will, for the same number of years and the same level of annual contributions, receive a much lower pension. That is simply because of the obvious reason that most people experience their peak earnings in their last few years of work after starting off with relatively low earnings while young. In a career average scheme low wages or salaries in the early years directly affect the pension calculation; in a final salary scheme they do not. Many teachers are struggling to secure employment in the early years of their careers and this will have a significant impact upon the overall career average. INTO also believes that the changes are likely to have an even greater impact on higher paid employees and those who receive above-average salary increases in future.

Although the government is planning to introduce an average increase of three percentage points for public sector employee pension contributions, this is aimed at cutting the government's contributions, not at raising the level of benefits.

INTO would highlight that more important than the new basis of calculating the pensions will be the proposed higher retirement age. Some existing staff who retires at 60, including teachers, under their current rules will be told they must now work to 65 for a full pension. And that normal pension age, it is now proposed, should rise even further, to 66, 67 and eventually 68, in tandem with the government's existing plans for the state pension. The effect of this will be just as profound as changing the underlying method for calculating

someone's pension. We feel that this approach is not reflective of the demands placed on public sector workers, including teachers and will be ultimately a false economy as sickness absence levels rise and the public sector cannot meet the demands of government. We would urge that any harmonisation is deferred for as long as possible.

**2. A direct link to equalise schemes' Normal Pension Ages with State Pension Age (except for the police and fire and rescue services)**

We have already referred to the matter above.

INTO would highlight that more important than the new basis of calculating the pensions will be the proposed higher retirement age. Some existing staff who retires at 60, including teachers, under their current rules will be told they must now work to 65 for a full pension. And that normal pension age, it is now proposed, should rise even further, to 66, 67 and eventually 68, in tandem with the government's existing plans for the state pension. The effect of this will be just as profound as changing the underlying method for calculating someone's pension. We feel that this approach is not reflective of the demands placed on public sector workers, including teachers and will be ultimately a false economy as sickness absence levels rise and the public sector cannot meet the demands of government. We would urge that any harmonisation is deferred for as long as possible. The exemption for the police and fire service is due to the 'physical' demands of their jobs. Teaching is not a desk bound profession. Teaching particularly in the primary sector is a very active profession. It requires the teacher to be highly mobile undertaking PE lessons and or working at floor level during activity based learning. We would also urge that this policy and its impact are screened for the impact of age in accordance with Schedule 9, Section 75 of the NI Act 1998.

**3. A Normal Pension Age of 60 (subject to regular review) for the police and fire and rescue services).**

INTO welcomes the decision to retain the default retirement age at 60. However we have serious concerns that while this exists, the other projected changes including the harmonisation of the state retirement age will force many workers to remain in work simply to be able to afford to live. This has serious ramifications for the NI economy as well as placing a significant responsibility on the state to support older workers post retirement. It will also mean that public sector workers who have managed some small savings for their retirement will have to rely on this just to manage.

**4. A final salary link for any final salary pension accrued prior to the date at which the new schemes will commence.**

INTO welcomes this offer of protection for older workers and the link to their final salary scheme in order to calculate and assess their retirement benefits. However employees who are below 50 years currently will suffer losses, even with this protection. INTO would encourage the NI Executive to work creatively with INTO and other trade unions to agree a way in which the worst aspects of this proposal can be offset for as long as possible.

**5. A scheme cost cap with a default mechanism to maintain costs with set cost floor and ceiling limits**

INTO would be concerned that this proposal is ultimately designed to allow Treasury to estimate the cost of public sector pensions. INTO is further concerned that such proposals rarely if ever benefit the scheme member. If the NI Executive is serious about a NI Specific scheme then they will agree with stakeholders such caps that are reflective of the makeup and demands of the public sector to ensure and detrimental impact is at a minimum. The figures relating to the liquidity of the scheme must be shared if the true costs of the scheme and a fair level of cap is to be realised.

**6. Transitional protection measures for scheme members who were within 10 years of their existing Normal Pension Age on 1 April 2012**

INTO welcomes any protection that is offered to existing members of the final salary scheme. However we are concerned that up until now there has not been overall transparency with regard to the cost of new scheme. We would urge that such a costing would be undertaken for the NI public sector to ascertain as to whether opportunities exist to extend the protection beyond the age range suggested by Lord Hutton in his report.

**7. Revised measures for scheme governance**

Up until now details of public sector schemes in NI have been shrouded in mystery and secrecy. Data when requested is not available or are incomplete yet “informed” decisions by the NI executive have been made on the basis of such information. This also calls into question the effectiveness of equality screening and impact assessment and the decisions reached on this area.

Reform must mean reform. INTO is no longer prepared to rely on out of date Government actuary reports or incomplete scheme valuations as a basis for pension reform. If governance is to be improved then it must be a root and branch reform which involves the proactive engagement of public sector workers and their trade union representatives at all stages of the scheme and its management. Only with such an approach and a commitment to openness and transparency can public sector works have confidence that proposed changes are inevitable and for the overall good of the workforce.

**Conclusion**

As stated at the outset of this document it is the view of INTO that the proposals for public sector pension reform must be contextualised for the public sector workforce, including the professional teachers who we represent in NI we believe that such a review should be undertaken in partnership with NICICTU trade unions including INTO.

To that end we ask that a detailed and careful consideration is given to this response and that proposals for pension reform in the public sector are changed to reflect our member's concerns and that the NI Executive move away from the UK status quo model to develop a pension scheme fit for the present and future employees of the public sector and which will benefit the NI economy overall

INTO remains willing to discuss any aspects of our response in order to clarify exactly what the policy of the Organisation is and ensure that the NI executive is fully aware of the position of INTO and how we could work together to address the issue of public sector pension reform.

Responses should be emailed to [pensionspolicydsp@dfpni.gov.uk](mailto:pensionspolicydsp@dfpni.gov.uk) or posted to:

Consultation on Proposals for Public Service Pensions Reform  
Civil Service Pensions  
Department of Finance and Personnel  
Waterside House  
75 Duke Street  
Londonderry  
BT47 6FP





## **Reform of PUBLIC SERVICE PENSIONS**

### **UNISON's written submission on Public Service Pensions Reform Northern Ireland**

#### **Introduction**

**UNISON** is the largest public service trade union in the UK representing around 1.4million members. The majority of our members are in the public service including approximately three quarters of a million members in the Local Government Pension Scheme (LGPS), nearly half a million members in the NHS Pension Scheme (NHSPS) and several thousand members in the Principal Civil Service Pension Scheme. In Northern Ireland UNISON represents more than 40,000 ,the majority of these in Health and Education.

**UNISON** was at the forefront of scheme specific negotiations with employers and government departments that resulted in the agreement for the Local Government Pension Scheme England and Wales from April 2014, and the NHS and Civil Service Pension Schemes from April 2015. UNISON undertook a comprehensive consultation with its members including member ballots in the Local Government Pension Scheme England & Wales & Northern Ireland, the NHS pension Scheme and the Civil Service Pension Scheme

**UNISON** believes that the purpose of the Public Service Pensions Bill should be to enable the individual pension schemes to implement the agreements reached between the employers and members.

**UNISON** has a number of serious concerns with the current wording of the Westminster Bill. It is our intention to try and seek clarification and reassurance on a number of the clauses of the bill and obtain amendments to the Bill where necessary. It is for this reason that we did not recommend MP's vote against the Bill at the second reading but will reserve our right to lobby MP's to vote against the Bill if necessary.

**The concerns we have with the Westminster Bill and will equally apply to the Northern Ireland Bill fall under four main headings:**

1. Are the provisions in the Bill as currently worded helpful to the implementation of the scheme specific Heads of Agreements?
2. Does the wording in the Bill provide adequate protection to members' rights and are there clauses with unintended consequences?
3. Does the Bill as currently worded enable schemes to deal with major issues that will impact on the ongoing cost of the schemes such as changes in longevity?
4. Does the Bill do enough to ensure effective governance of the schemes?

**The provisions within the Northern Ireland Bill should be sufficiently worded to prove helpful to the implementation of the scheme specific Heads of Agreements?**

For the agreements to work in both the LGPS and the NHSPS, it must be clear from the Bill that the schemes will be free to set up their own structures, as is the case now, to review pension policy and consider major changes to their scheme rules if necessary following a valuation.

In the NHSPS considerable work is undertaken by the Technical Advisory Group both on the assumptions and methodology used in the costing of the scheme and formulating proposals for change when necessary. The proposals are then taken to the Governance Group and Staff Council. At all stages the view of the Treasury/DFP is taken into account in formulating proposals.

**UNISON** would like assurance that a group along the lines of the Pension Policy Groups, as set out on *recommendation 17 of the Hutton Report*, would be able to be set up, and existing structures that currently undertake that role are able to stay in place, to operate effectively and consider any proposed changes to the scheme.

We would seek clarification that Treasury/DFP directions will not apply to individual LGPS funds. LGPS funds currently appoint their own actuary and agree with that actuary the assumptions and methodology most appropriate to their specific fund. Scheme regulations already specify when valuations are to be carried out and the requirements and control of valuations will be significantly strengthened under *clause 12 (4)* of the Westminster Bill.

**UNISON** would suggest that to make it clear at the outset, that any Treasury/ DFP directions made would require not just consultation, but the agreement of the government actuary. Also, that the Treasury should be required to consult and take into account the opinions of the existing governance structures of the schemes, before making a direction. To do otherwise seems to simply undermine the role of scheme specific governance structures.

When dealing with the employer contribution cap, **UNISON** would seek clarification as to what the Treasury/ DFP involvement would be with the LGPS. Principles designed jointly by the LGA and trade unions and agreed by the Government; provide a mechanism for setting the cap and collar that will be incorporated into the scheme regulations

We do not understand why any Treasury/ DFP directions should therefore apply to the LGPS as this seems to contradict the principles already agreed by government.

We would also seek to make it clear that any Treasury/ DFP direction made regarding the above would also need the Treasury/DFP to at least consult with the scheme manager and scheme board of the appropriate schemes.

**UNISON** is concerned that specific wording could unintentionally trigger a “crystallisation event” in funded schemes like the LGPS. This would have significant funding implications for all the funds in the scheme. We would suggest that within Northern Ireland it is made clear that existing public service schemes would not be closing but would be changed from a scheme change date, to reflect the respective agreements so that members can only accrue Benefits on the agreed basis from that date.

**Will the Northern Ireland Bill provide adequate protection to member's rights and will there be clauses with unintended consequences?**

**UNISON** does not believe that the proposed Pension Reform gives sufficient security to members and there are a number of areas that could potentially undermine the scheme specific agreements.

**UNISON** would not oppose an enabling provision which would allow Scheme regulations to make retrospective changes. It is however, essential that regulations cannot be made that have the effect of reducing accrued rights to pension benefits, unless the scheme members or their representatives have agreed to the change. The absence of such wording potentially undermines the commitment given by government that accrued rights up to the date the schemes are changed will not be reduced

This would also ensure workers in public service pension schemes would enjoy the same protection of their accrued pension rights as exist for workers in the private sector in pensions law.

**UNISON** understands from certain comments made by the government at the Westminster committee stage of this bill that the government believes trade unions would be able to prevent such a change and that if that failed, members could rely on the European Convention on Human Rights. Whilst appreciating the recognition of the role of unions in protecting workers pensions entitlements we would prefer that protections are built into the Northern Ireland Bill itself.

**UNISON** would suggest that The National Agreement with the government is based on public service schemes remaining Defined Benefit Schemes after 2014 and 2015. The government is on record as believing that these agreements should last at least 25 years and this is set out in Clause 20 of the Westminster Bill. The power currently in Clause 7 of the same Bill to potentially replace the schemes with defined contribution schemes, let alone a scheme of any other description, will undermine confidence in that agreement.

There is a defined contribution scheme already operating in the civil service but this is in addition to the defined benefit scheme. Members are able to choose which scheme they can join. If the intention is to be able to establish other types of schemes to operate alongside the defined benefit schemes, the wording should reflect this.

With the move to CARE provision this would have the effect of reducing accrued rights especially in the case of schemes negotiated for the LGPS and Civil Service Pension Schemes where the revaluation rate on earnings only is linked to CPI. The possibility of reducing benefits through negative revaluation was not part of the scheme specific discussions or the costings that underlined them.

**UNISON** as a major Health and Social Care Union has concerns regarding the direction taken on possible closure to existing Injury and Compensation Schemes. We have already set out our understanding that existing public service schemes should not be closing but would be changed from a scheme change date to reflect the respective scheme specific agreements, so we cannot see why injury benefit schemes need to be closed - this was not part of the scheme specific discussions that UNISON attended.

**UNISON** believes the emphasis in this section should be on continuing existing injury allowance arrangements in accordance with the existing scheme regulations. Injury benefit arrangements have already been periodically reviewed and regulations amended in the NHSPS.

**UNISON** would wish to protect the accrued rights that members have earned in their Public Service Pension Schemes. We cannot see why there should be a power to make retrospective provision which adversely affects members of the schemes. We would want to change wording so that any adverse effect would require the changes to be made to regulations using the affirmative procedure, so that it would be debated in the Assembly. An adverse effect can be measured but a significant adverse effect is open to interpretation and is subjective.

Under the agreements a cost cap will be enforced so it is certainly possible that schemes will need to change in the future, however it should be made clear that any change must not have the effect of reducing accrued rights.

**UNISON** would also question why such changes would not require normal consultation procedures. The jointly agreed scheme specific governance arrangements should be discussed and considered by the relevant scheme bodies and then, if agreed by the stakeholders, consulted in the usual way.

**UNISON** would wish to see specific mention in the Northern Ireland Bill to an agreement on "Fair Deal". In future Fair Deal would be achieved by members being allowed to stay in their existing public service schemes on

first and subsequent transfers to the private sector. UNISON sees this as a key protection both to the scheme members and the continuing sustainability of the schemes.

**'Fair Deal'** is important to scheme members, because it means their pension provision will not worsen if they are outsourced. It is important for the continuing sustainability of the schemes because if large numbers of contributing members are lost to the scheme it means the schemes will become increasingly 'cash poor' with the gap between contributions coming in, and pensions being paid, widening. In addition, for funded schemes it will mean the proportion of younger members against the total membership is likely to decline, with the result that the older profile of the scheme members will mean the cost of the scheme increasing.

**The Northern Ireland Bill should be worded to enable schemes to deal with major issues that would impact on the ongoing cost of the scheme such as changes in longevity?**

As part of the agreements, normal pension age in the public service schemes will be linked to a member's state pension age (SPA) for service after the date that the schemes change in 2014/15. UNISON understands the government's intention to try and use the link to SPA to deal with increases in life expectancy of scheme members. UNISON would however, suggest that a future review of the continuing appropriateness of the link between Normal Pension Age (NPA) and SPA be built into the Northern Ireland Bill. We believe it is necessary to ensure that the variation in changes in life expectancy in public service schemes is reflected in the changes in the SPA. Periodic reviews were recommended by Lord Hutton in his final report.

There are clear issues of fairness relating to groups of workers who do not enjoy the same life expectancy as others and there are serious issues regarding how schemes would be costed, if scheme specific life expectancy is seriously out of sync with SPA.

The other issue that makes it prudent to allow a review to take place is whether the link is ever likely to be successfully challenged under the European Convention on Human Rights. This could occur for example, if a service is outsourced and colleagues doing the same job end up with different levels of protection on their NPA.

In the private sector, if a retirement age is changed it can only apply to service after the date of the change. In the proposed public service

schemes after 2014/15 all service from those dates would be changed to reflect a different retirement age if SPA continues to be increased.

**UNISON** would also suggest that there are specific discussions regarding the affect of working longer on specific groups of workers. For example, as part of the agreement in the NHSPS, a Working Longer Review Group has been set up. The review will take up to 18 months and will look at specific groups, for example paramedics. **UNISON** would not wish to pre-judge the findings of the group. The Northern Ireland Bill should at least enable schemes to be able to look objectively at the effect on members having to work longer and also take into account the views of employers. Employers may find it preferable that some groups have a lower normal retirement age rather than having to deal with issues including increasing long term sick leave and ill health retirements as retirement ages increase.

### **Will the reforms do enough to ensure effective governance of the schemes?**

**UNISON** has always worked hard to try and improve the governance of pension funds and to make them more transparent and accountable to the stake holders.

All funded public sector schemes in the European Union, including those made under statue with a state guarantee are covered by the requirements of the EU Directive – Institutions for Occupational Retirement Provision (IORP). The provisions in the Northern Ireland Bill must not fall short of the requirements of a funded pension scheme, which the LGPS is.

The Westminster Bill sets out the local authority becoming the scheme manager for each fund, with a pensions committee and/or a local board, but does not say how that board is constituted. Currently the pensions committee is run under local authority law, on which the councillors sit in the lead party majority, with a fiduciary duty to tax payers and not to scheme members.

This means that that the current governance system sits outside of the EU IORP Directive despite its transposition into UK law via the Pensions Act 2004 and the Occupational Pension Scheme Investment regulations. **UNISON's** counsel opinion, which we submitted in detail to the Hutton Commission, is clear that the IORP Directive Applies to the LGPS funds.

Governments can exempt statutory IORPs, such as the LGPS from Articles 9 to 17 of the Directive's 22 principal articles. This is by virtue of Article 5 of the Directive which says.

"Article 5: Member States may choose not to apply Articles 9 to 17 to institutions where occupational retirement provision is made under statute, pursuant to legislation, and is guaranteed by a public authority."

However, the major issues of non-compliance of the LGPS arise from Articles 8 and 18 of the Directive.

Article 8 requires legal separation of the IORP (in this case each LGPS fund) from the employer. Article 18 requires prudential investment rules, investments to be made in the sole interests of scheme members and beneficiaries and conflicts of interest resolved in their favour.

We believe that the Assembly must introduce the directive to the LGPS by amending the Bill or face potential legal challenge.

**UNISON** would suggest an amendment to show that the European Directive – Institutions for Occupational Retirement Provision (IORP) applies to public funded Public Service Schemes such as the LGPS. UNISON does not believe it is appropriate for *articles 9 – 17* to apply to a statutory funded scheme such as the LGPS and member states can choose not to apply these articles. However, there is no such power to dis-apply *articles 8 & 18*.

**UNISON** would suggest that it makes clear that the Pensions Manager and Pensions Board cannot be one and the same person or persons. In practice the two roles are distinct so a tightening up of the wording we believe would be advisable. The local authority cannot run the pension system, an independent board could if it is separated from the sponsoring employer, and an example of this is the London Pension Fund Authority.

**UNISON** believes that appropriate wording to reflect the above will lead to greater transparency and more effective governance. It is particularly important at a time that discussions are taking place over the extent of possible infrastructure investments that *article 8 & 18* are taken into account.



**UNISON** has pushed for member representation on pension scheme committees for many years. Lord Hutton in his final report recognised member representation on pension fund committees represented best practice and should be introduced. **UNISON** would suggest that every pension board should have member representation. Ideally it should provide the same level of representation in public service pension schemes as is required in private sector defined benefit schemes. After the 'Maxwell' pension scandal and the findings of the Goode Committee, the Pensions Act 1995 required all defined benefit schemes to have a minimum proportion of member nominated trustees. This is still in force as amended by the Pensions Act 2004. The minimum proportion was initially and remains 1/3 of the Trustee Board but the government has given itself the power to increase this to 1/2 at some time in the future.

The argument has been in the past that an occupational pension scheme that is made under statute like the Local Government Pension Scheme means that members of the scheme do not bear the same level of risk as colleagues in the private sector. In fact, it has become clear that while accrued benefits are effectively underwritten by the Local Authority, investment performance together with employers paying very low levels of contributions during the 1980s and early 1990s has significantly contributed to the size of LGPS past service deficits. The effect of low contributions and declining investment returns has had a greater effect on the size of the deficits than the increase in life expectancy. It is clear that the cost pressure caused by these deficits has been a major factor influencing decisions to change future pension provision in the past. So although under the current cost cap proposals investment returns are excluded, the members of the scheme do bear significant risk if the performance of the funds do not result in alleviating cost pressure and should have representation on the pension boards.

9<sup>th</sup> April 2013

## NIPSA Consultation response

YOUR REF

OUR REF



*The Leading Public Service Union*

Brian Campfield General Secretary

Consultation on Proposals from  
Public Service Pension Reform  
Civil Service Pensions  
Department of Finance & Personnel  
Waterside House  
75 Duke Street  
**LONDONDERRY**  
**BT47 6FP**

8 April 2013

Dear Sir/Madam

### **NORTHERN IRELAND PUBLIC SERVICE PENSIONS REFORM**

I refer to the DFP consultation document of 21 January 2013 in respect of the above.

I am attaching a copy of the NIPSA response to the consultation document, a hard copy will follow by post.

NIPSA's position is set out in the response. NIPSA requires specific and detailed responses to all of the numerous issues raised in the response. NIPSA will also be vigorously pursuing these matters with the NI Assembly DFP Committee and in the negotiations between NICICTU and DFP/Sponsoring Departments.

Yours sincerely

**BUMPER GRAHAM**  
Assistant General Secretary

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**NORTHERN IRELAND PUBLIC SERVICE  
PENSIONS REFORM**

**Consultation on Proposals to Reform Public  
Service Pensions from April 2015**

**(DFP Publication 21 January 2013)**

**Response of the Northern Ireland Public Service  
Alliance (NIPSA)**

**April 2013**

## **INTRODUCTION**

1. NIPSA is Northern Ireland's largest Public Service Trade Union with over 46,500 members.
2. Of those 46,500 members circa 45,000 are affected by the proposals to be contained in the Northern Ireland Public Service Pension Bill. The main Schemes in which NIPSA has membership are the PCSPS (NI), HSC Superannuation Scheme and the LGPS/NILGOSC Scheme, NIPSA also has an interest in other related Schemes.
3. NIPSA does not accept the DFP position in respect of the "engagement" and/or "consultation" process with the trade unions. Pension provision is a fundamental feature of terms and conditions and is legally deemed to be deferred pay this therefore requires full and open negotiations with the trade unions that represent members covered by the proposed Bill.
4. Even if the "consultation" point was to be accepted for the purpose of the current DFP public consultation, as per the 21/1/13 document NIPSA would remind DFP and the Minister as to the judgement of Lord Woolf. Specifically to how Woolf, Master of the Rolls in *R v North & East Devon Health Authority, et parte Coughlan* (2001) QB 213 ruled as to the meaning and purpose of consultation.

5. A further failing of the process is that the NI Bill is to be predicated on the Westminster Bill, yet that Bill has not completed its passage with the Ping Pong stage set for the 23 April 2013.
6. As will be illustrated in the comments that follow NIPSA is wholly opposed to the proposed content of the NI Bill. In addition, the Bill needs to be considered in a much wider context with regard to both Public Service Pensions and proposed changes to the State Pension.
7. The change in indexation from RPI to CPI adversely impacts on the value of public service pensions by circa 15%. In addition for the unfunded schemes (all those within the ambit of the Bill except LGPS/NILGOSC) the additional employee contributions are to average out at 3.2% by April 2014. These represent yet further attacks on public sector pensions.
8. The Westminster DWP whitepaper and subsequent draft bill of January 2013, "The Single-Tier Pension: A Simple Foundation for Saving, has major implications for public service pensions. In particular two aspects;
  - (i) the arrangements for increasing the State Pension Age; and
  - (ii) the ending of contracting-out.
9. The comments that follow are based on the structure of the DFP consultation paper of 21/1/13.

## **CONSULTATION DOCUMENT**

10. **Purpose:** NIPSA does not accept that it is the role of the NI Executive and in particular the NI Assembly to just replicate in full the Westminster Bill. Public Service Pensions are a devolved matter and there is a need to give full and proper assessment to the issues raised in this response and by the NIC ICTU Trade Union Side both in it's engagement with the Assembly DFP Committee and in the meetings with DFP/Sponsoring Departments Officials.
  
11. **Background: Why are Reforms Needed?:** in 2005 public service unions entered in to negotiations with employers on a scheme-by-scheme basis and agreed certain outcomes for the future of public service pension schemes. In many cases the change either had still to be introduced and/or agreement reached on measures such as "cap and collar". The current Westminster Government reneged on the outcome of those negotiations as soon as it was elected in 2010. NIPSA whilst unhappy with aspects of the 2005 changes believes that they provided the basis for fair and sustainable public service pension reform.
  
12. It is NIPSA's view that the totality of the changes (see paragraphs 7 and 8) are not only an attack on public servants but will also seriously damage scheme sustainability. The implications being likely further additional contribution increases, further increases to normal retirement age and yet more diminution of scheme benefits. This will result in greater dependence

upon welfare benefits by retired public servants and exacerbate pensioner poverty.

13. Reference is made to the work of the "Independent Public Service Pensions Commission (IPSPC), otherwise known as the Hutton Report. NIPSA disputes the "independence of the IPSPC and would also point out that the Westminster Government interceded on the work of the Commission via the unilateral decision to change indexation to CPI from RPI. The Government also determined at interim report stage to apply the average 3.2% additional contributions, again without any negotiation or consultation.
14. Attached as an appendix to this response are a copy of;
  - (i) NIPSA Commentary and Assessment of the IPSPC interim report; and
  - (ii) the NIPSA submission to the second call for evidence by the IPSPC.
15. **Managing Pension Costs:** Reference is made to the potential losses to the NI block funding. There is no proper basis or assessment of how the Finance Minister arrived at the quoted £262m figure.
16. This section at least brings some honesty to the basis for the proposed changes. It identifies that by circa 2060 the GDP costs of public service pensions will fall from 1.5% to 0.9%. This is clearly linked to the proposals for the changes to the state pension (see paragraph 8) with its aim being by 2060

to reduce GDP expenditure on state pensions from 8.5% to 8.1%. (Also attached as an appendix is the NIPSA response to the DWP White Paper).

17. Reference is made to DFP's own "actuarial analysis" if this is the document provided to the NIC ICTU Trade Union Side then NIPSA disputes the accuracy of the figures. The work done by GAD was predicated on the NI HSC Scheme extrapolated across the rest of the NI Public Service Schemes on a 7% figure. The HSC costing is disputed as it applied a baseline cost of 26% vis-à-vis the published cost figure of 21%. No account was taken of scheme variables across the other schemes such as membership uptake pension values, age profile, impact of auto-enrolment to list just a few.
18. The unions have pressed for and to date been denied (with the exception of NILGOSC) full scheme triennial actuarial assessments. Costings that can be relied upon can only be so when those assessments are made available.
19. The costs to the NI Block and the cost for social security have not been properly assessed. In particular the wider macro economic impact of increasing the normal retirement age with the resultant reduction in labour market opportunities for the unemployed, school/university leavers and those seeking to return to the labour market has not been researched.
20. There are clear adverse economic considerations for Northern Ireland that have not been factored in as well as the costs to the social security budget (see also paragraph 12).



21. In addition issues such as the "grey pound" spend have not been assessed.
22. **The Bill in Westminster:** As per paragraph 5, the Bill has yet to be completed. In the stages to date there have been a number of changes and it remains to be seen as to what the final form of the Bill will be. Given the timeline it is not acceptable to NIPSA that negotiations on the NI Bill should be shoehorned or truncated in order to meet unrealistic timeframes imposed by the Government at Westminster.
23. **Core Provisions:** As per paragraph 11 the post 2005 outcome addressed these issues and it must therefore be concluded that the intent of the Government is to again attack public servants and make them pay for the wider economic mismanagement of the UK.
24. **CARE:** NIPSA does not accept that any case has been made to remove the final salary link, it is accepted that some NIPSA members are already covered by a CARE Scheme i.e. NUVOS PCSPS (NI) members. There are options/solutions that can deal with what are deemed to be excesses in terms of those who enjoy pensions for example that produce annual income into six figures. Such examples should be dealt with by a fairer general taxation regime.
25. **Linking NRA to SPA:** See comments elsewhere in this response as to the need to assess the macro economic impact in Northern Ireland. NIPSA

believes without prejudice that at the very least there is value in establishing a Northern Ireland Review Group, similar to that established for the NHS Scheme to examine the increased NRA for various occupational groups across the Schemes. Another option that should be examined is the flexible decade of retirement, this would allow for people to leave early without actuarial deductions on the basis that going forward others will wish to stay beyond the NRA.

26. **Review Arrangements for NRA:** See comments in the response to the DWP White Paper on Single Tier pension.
27. **Final Salary Link for Accrued Service:** This is not giving anything, these are acquired rights related to pension as deferred pay. It is also the case that to do otherwise would be contrary to the convention on Human Rights as it is deemed that pensions are property and to have any erosion of the acquired entitlement would constitute theft of personal possessions.
28. **Cap/Collar:** NIPSA does not accept the cost basis of the HMT/GAD model scheme, nor the two papers of November 12 on cap/collar and triennial review mechanics. The cost envelope was worked backwards to suit what Government determined would be the maximum amount it would contribute to the schemes. The impact of breaching the collar will only result in further damage to schemes by increased opt outs as the only two solutions are either reduced benefits and/or further additional employee contributions. An additional issue relates to the correlation between increased NRA and ill-

health retirements, these costs should not be included as they relate directly to the Government's decision to both increase NRA and to further link it to increases in SPA.

The cost sharing aspect was one of the post 2005 reforms that discussions had only commenced on within the various schemes.

29. **Protections:** The protections if required as a consequence of the NI Executive/Assembly forcing changes should run for 10 years plus the taper from the implementation date of the revised schemes. De facto they are not 10 year protections given they ran from 1/4/12 yet it is planned that the implementation date is 1/4/15, thus really only 7 year protections (with LCPS/NILGOSC having a proposed 1/4/2014 date).
30. **Governance:** NIPSA supports the governance arrangements for NILGOSC in respect of scheme oversight/administration. There needs also to be proper negotiating bodies established to deal with scheme regulations, cap/collar, etc. The DOE LGPS/NILGOSC Review Group could form the basis for such scheme specific bodies.
31. **Twenty Five Year Guarantee:** There is no reference to this in the document yet it is a fundamental tenant of the Government's position, albeit wiped out as a consequence of the Single State Pension proposals.

32. **General NI Position:** As per the comments at paragraph 10 it is NIPSA's view that the NI Executive and Assembly should fully exercise it's devolved authority on public service pensions. There is no justification to slavishly follow the Westminster Bill, especially when predicated upon false assumptions as to the NI Block impact (see paragraph 17). There is also a total contradiction between the position taken on Corporation Tax and that on public service pensions and indeed other issues that adversely impact on working people vis-à-vis the corporate fat cats.
33. As clearly pointed out pensions are both a negotiable matter and deferred pay therefore the NI Executive had no right to come to a unilateral decision on 8/8/12 without any negotiation or consultation with trade unions and scheme members.
34. The timeline is wholly unacceptable (see paragraph 5). At 5 April the position for the LGPS England/Wales is still not clear thus making it impractical for NILGOSC changes from 2014. The 2015 date for other schemes is also not viable, given the timeline for the Bill and the need for scheme-by-scheme negotiations on the regulations.
35. No reference has been made to the November 12 HMT Paper on Fair Deal. NIPSA does not wish to see the Westminster approach being taken, it is NIPSA's position that full Fair Deal provisions need to be on the face of the Bill.

36. **EQIA Screening:** NIPSA fully rejects the decision to screen out a full EQIA. It is NIPSA's view that this is a pre-determined decision to (i) help expedite passage of the Bill and (ii) to deliberately ignore clear equality issues that arise.
37. **Part 1:** NIPSA contends that the proposals do represent a new policy rather than a change to existing policy. The scale of the changes are so draconian and fundamental to render the new schemes as being totally incomparable with the current schemes.
38. **Implementation Factors:** As per comments on the consultation document NIPSA totally rejects the financial analysis of the costings.
39. **Stakeholders Affected:** This is flawed as clearly the proposals impact upon trade unions in the representation of their members rights and entitlements with regard to pensions.
40. **Available Evidence Section 75 Category:** This is a very flawed, incomplete and gross over simplification of the totality of the issues and the inter-relationships between Section 75 categories.
41. **Racial Groups:** There is no evidence of any research into the uptake/opt-out of scheme membership by different racial groups. Pensions are a complex issue and the various proposed changes add greatly to such complexity. It is

possible that Racial Groups are more likely to have difficulties understanding and dealing with the complexities around pensions.

42. **Age:** It is clear that the proposals have age implications which need to be fully assessed. All schemes have full age profile data to state age profile is not available for NILGOSC is a clear distortion of the facts. If not then it is a demonstration that DFP did not go looking for the data.
43. **Marital Status:** As with age in respect of the data. In fact all schemes require nomination forms to be completed as well as dependants data to be held.
44. **Men/Women Generally:** Again all schemes have full data sets.
45. **Dependants:** See paragraph 43.
46. This lack of application clearly demonstrates a totally flawed process and endorses the points made re a re-determined outcome to the screening process.
47. **Needs, Experiences and Priorities:** Given the total lack of research and data gathering/analysis it is not surprising such N/A conclusions are drawn. A proper assessment would produce differing results.

48. **Part 2 Screening Questions:** Given the comments on paragraphs 36-47 above NIPSA rejects the conclusions in respect of the following Section 75 groups in particular; Age, Men/Women and Dependents.
49. **Part 3 Screening Decision:** To rely on the basis that all that is happening is a transposition of the Westminster Bill to Northern Ireland is not acceptable and not a defence against a full EQIA.
50. The FBU have provided evidence with regard to adverse impact on women fire-fighters and the LGPS England/Wales EIA identified equality impact issues.
51. The decision of the NI Executive is not binding as the ultimate authority rests with the NI Assembly in respect of the passage of legislation.
52. The screening is totally flawed due to the massive evidence/data gaps in spite of the readily available existence of such data.
53. NIPSA will lodge a complaint to the Equality Commission should a full EQIA not be completed.

## **CONCLUSIONS**

54. NIPSA without prejudice to it's opposition to the totality of public sector pension scheme reforms and the interface with the proposed revision from

April 2016 of the state pension provisions believes that the decisions of the NI Executive, DFP Minister and DFP Officials are wholly flawed.

55. The comments in this response clearly identify such failings. NIPSA calls on the NI Executive to scrap the proposals in their entirety.
56. In addition NIPSA calls on the NI Executive to reopen negotiations to include an examination of the impact of the RPI to CPI indexation change, additional employee contributions and the interface with the state pension proposals.

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## INDEPENDENT PUBLIC SERVICE PENSIONS COMMISSION

### INTERIM REPORT – 7 OCTOBER 2010

#### NIPSA COMMENTARY AND ASSESSMENT

- Note**
- *The references in this Commentary and Assessment relate to the structure of the Interim Report.*
  - *Issues that arise in either the Foreword and/or Executive Summary are covered within the commentary on the substantive chapter of the Report.*

#### Chapter 1 – The Pensions Landscape

##### Para

- 1.7** The Report acknowledges that employee contribution rates have increased “somewhat in recent years” and is dismissive of such increases. The recent changes to Public Service schemes have resulted in real level increases in employee contributions of 56% -v- a 33% increase in scheme costs.
- 1.9** Public Sector schemes historically led the way in pension scheme design, now Hutton bends to the trend set by the private sector to disimprove the provision of decent pension schemes.
- 1.10** The development of differences within Sectors e.g. three Civil Service schemes and the divergence of schemes are not the fault of scheme members past or current but a reflection of tinkering and changes brought about by various Governments.
- 1.11** Given the number of public service pension scheme members there should be greater recognition of the impact on state social security payments, should either changes or withdrawal of scheme members place a greater demand upon the benefit system.
- 1.14  
(Box 1.B)** Not only is the NHS scheme returning a positive excess i.e. total contributions for 2009/10 being in excess of all benefit payments by some £2bn, so is the NILGOSC scheme which for 2009/10 had a surplus of circa £41.5m on contributions over benefit payments and expenses.
- 1.20** The Report recognises that currently there are twice as many female active members within the schemes and that male earnings and

hence pensions are higher than female benefits, yet nowhere in the Report does it raise the question of equality proofing.

- 1.24** Whilst Hutton in his press release and Foreword nailed the myth of Public Service Pension Schemes not being Gold-Plated the Table 1.B confirms this by detailing the value of the average mean pension value for each of the main schemes, including LGPS (England) £4,052, NHS (England/Wales) £7,234 and Civil Service (UK) £6,199. The overall average is £6,497 which is influenced by higher mean averages for Teachers (England/Wales) of £9,806 and the Armed Forces (UK) £7,722.
- 1.25** Data shows over 50% of pensioners in receipt of pensions of less than £6,000 pa but 1:10 males and 1:25 females receiving pensions in excess of £20,000 pa, whilst this accounts for less than 5% of pensioners, pensions in excess of £20,000 account for 25% of costs.
- 1.26** The gender equality issue is brought into stark relief with the production of the data showing male media pensions just over £8,000 pa and media female pensions at just under £4,000 pa.
- 1.27** The imbalance of public service pensions is again highlighted by the data at this section of the report, approximately 50% LGPS pensions receive less than £3,000 pa but yet 59% of police pensioners receive over £15,000 pa. Despite these differences the Report seeks to treat all Public Service Pension Schemes as one for the purposes of Phase 2 recommendations.
- 1.30** The vast differences of pension values within schemes is highlighted here with 1% of pensioners in receipt of pensions worth at least £37,000 per annum <sup>2</sup>/<sub>3</sub> of which are within the NHS scheme mainly paid to long-serving Doctors. This also distorts the mean value of the NHS pension at £7,234 pa.
- 1.36** This highlights not only the (-----) value of private sector pensions but the scurrilous fact that private sector employers do not contribute towards employee pensions in the main. Of 19 million private sector employees only 6.6 million are in any employer scheme, equating to approximately 35%, compared to 85% of public servants who are in a scheme.
- 1.44** Confirms the inherent problems of defined contribution schemes in having the member/employee carry all the risk, yet Hutton does not totally rule out some potential role for a defined contribution mechanism going forward.

## **Chapter 2 – Recent Reforms to Public Sector Pensions**

### **Para**

- 2.4/2.5/2.6 + Table 2.A** This provides a feint synopsis of the various changes that came about following the Public Services Forum discussions on the need to examine the structure of Public Service Pensions. Whilst earlier in the Report (1.1) he comments that Public Service Pensions have not seen much change since the 19<sup>th</sup> century. Clearly, he cannot be right on both counts and the changes over recent years have been significant.
- 2.7** 'Cap and Share' or cost sharing as referred to in the review of 2005 have not yet been introduced. Discussions are continuing on the introduction of this mechanism. Despite this Hutton intends to introduce yet more reform before the agreed reforms have been imbedded.
- 2.14** The new Government pre-empted Hutton with the announcement in the June 2010 budget that CPI movements rather than RPI would be used for indexing going forward. This makes a significant change to the cost of schemes and more importantly attacks the value of pensions.
- Based on historic rates of RPI and CPI a pensioner today retiring on a £5,000 final-salary could expect an income of £9,737 in 20 years if it is uprated in line with RPI. However, if it is uprated in line with CPI it will only be worth £8,497 – 13% less. Over that 20 year period, the pensioner will miss out on £10,367 of income. The longer the pensioner lives – the worse the impact will be. This is therefore likely to mean as each year passes a greater likelihood if not inevitability that the state will have to top-up the pension with social security payments.
- 2.15** Confirms the average impact of this change on scheme costs and with other scheme changes post the 2005 Public Service Forum outcome results in a 25% reduction in the totality of the pension package.

## **Chapter 3 – The Framework of Principles**

This chapter sets out in broader detail the four principles as referred to in the cover circular i.e.

- affordable and sustainable;
- adequate and fair;
- support productivity; and
- transparent and simple.

Chapters 4-7 (inc) cover each of the four principles in detail.

#### **Chapter 4 – Affordable and Sustainable**

This chapter deals with long-term estimates of the cost of pensions and in doing so examines complex assessments of the likely cost against a number of economic measurements. In addition the report recognises in a limited manner the fundamental difference between unfunded schemes and funded schemes such as the Local Government Pension Scheme.

##### **Para**

**4.21/4.22** Considerable comment is made on the Report and by those who  
**4.23/4.24** seek to dilute Public Service Pensions of the costs as a proportion of Gross Domestic Product (GDP). Over the period 2009/10 (1.7% GDP) 2019/2020 – 2029/2030 (1.9% GDP) falling back to 1.7% by 2049/50. Given that there are 12 million active/deferred/pensioner members of public service pensions this is not a high level of GDP expenditure.

It also fails to take into account the extra cost that could fall upon GDP expenditure from state pensions should more public service pensioners have to depend upon pension guarantee payments and/or total opt-outs by public servants from pension schemes. Over the same projected period GDP expenditure for state pensions rages from 5.3% to 6.5%.

#### **Chapter 5 – Adequate and Fair**

##### **Para**

**5.2-5.7** Seeks to deal with what is an adequate level of income for those in retirement. There are many measures for this and the Report (-----) in the proposals put forward by Lord Turner Pensions Commission. This is based on a percentage of final gross income as detailed in table 5A.

In NIPSA's submission (para 2.9) the case was made that the minimum total pension income should be the European Decency Threshold. This would link to some degree with Turners aims.

This would lift all pensioners out of the poverty trap and also remove dependency upon the Pension Guarantee Credit. Currently the State Pension and Guarantee Credit is made up as follows:

|                | State Pension | Guarantee Credit | Difference |
|----------------|---------------|------------------|------------|
| Single Person  | £4,907 pa     | £6,779 pa        | £1,812 pa  |
| Married Couple | £7,941 pa     | £10,345 pa       | £2,407 pa  |

As can be seen from the data in the Report vary many public service pensioners are in receipt of occupational pensions that only just lift them above the pension credit level.

- 5.12** The Report acknowledges that many women will not reach the Turner levels of adequacy. This confirms the need as identifiable in the comment above on para 1.20 of the Report for full equality proofing of Hutton's proposals.
- 5.19/5.20** These paras demonstrate the lack of fairness between the Public Service schemes in terms of the average value of pension payments as a percentage of salary.
- 4.65/4.66** Each scheme has to complete triennial detailed actuarial assessments in order to assess the current funding or national funding levels and projected funding levels to meet liabilities going forward. These reviews are known as the Actuarial Valuation and for many of the schemes these are due to be published in November 2010. The Phase II Report will consider these, along with a longer term assessment of the move for indexation from RPI to CPI.
- 4.76** The Report comments at 4.76 – 4.95 (inc) on the English LGPS, recognising the differences between a fully funded i.e. invested scheme as opposed to the majority of Public Service schemes which operate on a pay-as-you-go basis i.e. pension costs come each year from a mix of employee contributions and HMT top-up payments. In Northern Ireland the NILGOSC Scheme is an invested scheme and broadly in line with the LGPS as to structure and regulations.
- 4.79** The LGPS (England) is cash positive and will be liable to remain so until sometime in the period 2016-2025 i.e. the income from employer/employee contributions each year exceeds the value of the pension payments. The NILGOSC scheme is also cash positive.
- 4.93** The Report concludes that there should be no change to the status/arrangements for the LGPS.
- 4.95** Taking what is said at 4.93 this para states that the LGPS should 'in line with the unfunded schemes need to consider long-term structural reform of benefits and employee contribution rates'.

It is unclear from these statements if Hutton expects whatever comes out from Phase II to apply to funded schemes such as the LGPS.

**5.31 (Box 5.C)** The Report uses the projective term of 'low flyers' vis-a-vis 'high flyers' to distinguish between lower/moderately paid and high earners. The example given nevertheless does demonstrate the very real value differences in the percentage rate of pension pay expressed as a percentage over average career salary.

The signal is very clear that the Phase II report will address this disparity, either via introduction of a career average based scheme in capping the value of what is deemed to be pensionable pay.

**5.35** This comments on the recent reforms in some schemes to introduce tiered contribution levels as a means in some degree to address the disparity issue detailed at Box 5.C, whilst tiered contribution levels are deemed to have made some change for better equity they have an cannot address the inequalities.

## **Chapter 6 – Supporting Productivity**

This chapter is most concerning in that Hutton seeks to undermine 'Fair Deal' the agreement on transferring functions from the public sector to the private sector and in doing to having to ensure that the Private Sector transferee employer has in place a broadly comparable pension scheme to the public sector scheme from which the employee is being compulsory transferred from. This is covered in detail in the Report a Box 6.C.

Not only is this an attack on public service pensions but it is a very clear attempt to assist the Government in its wider anti-public service ethos and to assist with its plans for privatisation, contracting out and externalisation.

## **Chapter 7 – Transparent and Simple**

This Chapter correctly comments on the complexities of scheme rules/regulations and how difficult it is for most people, be they scheme members or the public, to understand scheme funding, entitlements etc. It fails however to consider the general lack of real scheme member participation in the control of the various public sector pension schemes.

## **Chapter 8 – Reform: Short-Term Options for Reform**

### **Para**

**Box 8.A** The Report recognises the need for proper protection of scheme members accrued rights i.e. those that they have built-up to the point of any change.

Hutton recommends to Government that they should consider as an

immediate step increasing member contribution rates. This is despite the fact member contributions have seen real level increase of 56% in recent years (see para 1.7) and that with Cost-Sharing/Cap and Share further increases are looming over the short-term.

It is significant that Hutton calls for the Armed Forces to be excluded from this. The Armed Forces do not contribute currently but yet have a scheme that is more generous than most as demonstrated in table 5.C with a 32% on average payment of salary, compared to 17% in the Civil Service and NHS schemes.

Hutton does however acknowledge the need to protect the low paid but more from the perspective of the likely adverse impact on scheme membership due to the likelihood of increased op-outs from scheme membership.

**8.1** The Report acknowledges that pensions are long-term matters and that the Government cannot expect quick short-term gain, this is over and above what they achieved with the indexation move from RPI to CPI.

**8.18**

## **Chapter 9 – Long-Term Structural Reform**

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## **Annexes**

**B**

**C**

**D**



**SUBMISSION TO THE  
SECOND CALL FOR  
EVIDENCE  
(1 NOVEMBER 2010)  
OF  
THE INDEPENDENT  
PUBLIC SERVICE  
PENSIONS COMMISSION**

15 December 2010



## **1. INTRODUCTION**

- 1.1** NIPSA is Northern Ireland's largest trade union representing 46,000 members employed in the Northern Ireland Civil Service, Non Departmental Public Bodies, Public Services, Local Government and the Community/Voluntary Sector.
- 1.2** With regard to the Public Service Pension Scheme coverage of the Commission, NIPSA has membership as follows:-
- Principal Civil Service Pension Scheme Northern Ireland (PCSPSNI) circa 21,000 members
  - Health and Personal Social Services Northern Ireland Pension Scheme (HPSS) circa 9,000 members
  - Northern Ireland Local Government Officers Superannuation Scheme (NILGOSC) circa 15,000 members.
- 1.3** In addition to the 45,000 active members of the above schemes NIPSA has retired members in all of the schemes, as well as former members holding deferred member rights in the schemes.
- 1.4** With regard to the specific Northern Ireland schemes these are primarily based upon the principle of parity with the relevant Great Britain scheme e.g. NILGOSC and the Local Government Pension Scheme. The provision of parity is based on specific legislation and/or contractual entitlements.
- 1.5** NIPSA was part of the trade union delegation that met with Lord Hutton on his Belfast visit and NIPSA officials have raised issues relating to the work of the Commission in other forums e.g. NAPF Local Authority Forum on the 12 November. On these occasions Lord Hutton has been specific that

his work does not extend per-se to Northern Ireland and that any decision to action recommendations is one for the Northern Ireland Executive.

- 1.6 NIPSA acknowledges the very precise point being made by Lord Hutton but would point out that the schemes are in the main by-analogy versions of GB schemes provided for in legislation and/or contracts of employment and therefore the Commission's recommendations are liable to follow through to Northern Ireland.
- 1.7 Likewise the impact of decisions such as the move from RPI to CPI for indexing, the pension tax changes and the public sector pay freezes all have impacted on the pension provision for active/deferred members and pensioner members of public service pension schemes within Northern Ireland.
- 1.8 NIPSA made a detailed submission to the first call for evidence and has provided a detailed briefing on the Phase I Report of the Commission; this is available from the NIPSA website at [www.nipsa.org.uk/Campaigns/Public-Service-Defence-Campaign/PublicServices-Pensions-Independent-Commission-Interim-Report-NIPSA-Briefing](http://www.nipsa.org.uk/Campaigns/Public-Service-Defence-Campaign/PublicServices-Pensions-Independent-Commission-Interim-Report-NIPSA-Briefing)

## **2 OVERVIEW**

- 2.1 NIPSA was disappointed with the overall thrust and recommendations contained in the Commission's Interim Report. Whilst NIPSA welcomed the commitment to retaining defined benefit pension schemes and the dismissal of the myth that public service pension schemes are 'gold-plated', we are concerned that it paves the way for further adverse changes to public sector pension provision.

- 2.2** The Interim Report correctly acknowledges the very considerable disimprovements over the past decade in private sector pension provision but it does not go far enough to put the emphasis on the need for these to be improved. It is in this area that Government is exposed, on the one hand to major state intervention to bolster wholly inadequate levels of occupational pension and on the other hand it shores up the massive greed and tax exploitation by the top 1% of Directors/Senior Managers in respect of their pension provisions.
- 2.3** The Interim Report at Chapter 5 covers the issues of adequacy and fairness. NIPSA considers this to be a key issue, including the question of equality; it is therefore more than disappointing that there is neither any evidence nor call for full equality proofing of either the Interim Report or the Commission's final recommendations.
- 2.4** As with the point made at 2.2 above on state subvention i.e. via payment of pension credit the Interim Report at paras 5.2-5.7 recognises, to a point, this issue but fails to fully address the matter. NIPSA does not believe that the Report's recommendations and the actions of the Government, especially over indexation will do anything to improve the inadequate levels of pension provision.
- 2.5** NIPSA is very concerned with the Interim Report's comments and recommendations in respect of *'Fair Deal'* and totally rejects the content of Chapter 6.
- 2.6** It is noted by NIPSA that the Government has confirmed its commitment to auto-enrolment, albeit it has been delayed to 2012 and will be introduced on a longer phased basis. NIPSA would question the value of this against the very likely high level of public sector pension scheme

membership withdrawals due to the acceptance by the Government of the Interim Report recommendation to increase employee contributions.

- 2.7 The impact of the Interim Report's recommendations on employee contribution increases allied to the severely damaging indexation changes at a time when public servants' pay and job security is under severe attack, will result in very significant withdrawals from the pension schemes. This will not only damage the schemes and also place greater demand on state subvention with payment of pension credit going forward but will also do considerable damage to any prospect of improving the standard of living and adequacy of pensions for public sector pensioners.
- 2.8 NIPSA would wish to reiterate what was said in our original submission and in particular to point out that we do not accept the need for changes to public sector pension schemes due to the Government's obsession with what they claim is the unacceptable deficit of both the public finances and the funding of public service pension schemes.
- 2.9 NIPSA does not accept the basis of these claims nor the assault on both public services and public servants. NIPSA fully endorses para 2.11 of our first phase submission i.e.

***"The "fiscal challenges ahead" are not as a consequence of public service staffing numbers, pay or pension costs but as a direct result of the fiscal and economic crisis created by the banking and financial institutions which Government was at least complicit in and then bailed out. It is unacceptable to NIPSA for Government to attack and sacrifice public service pensions to part pay for this economic mismanagement".***

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### **3 FUNDED SCHEMES V PAY AS YOU GO SCHEMES**

- 3.1** As detailed at 1.2 above NIPSA has circa 15,000 members in the Northern Ireland Local Government Offices Superannuation Scheme (NILGOSC), the NI version of the LGPS and hence a funded scheme.
- 3.2** The remaining NIPSA membership are in pay-as-you-go schemes, mirroring the Principal Civil Service Pension Scheme Northern Ireland (PCSPSNI) or the Health and Personal Social Services Northern Ireland Pension Scheme (HPSS)
- 3.3** NIPSA has considered the comments of the NILGOSC Committee and the Trade Union Side of the National Joint Council (NJC) for Local Government Employees; in respect of both assessment of the Commissions Interim Report and also the respective submissions to this second call for evidence. NIPSA would broadly endorse the points made by both with regard to the very different position of the funded schemes viz-a-viz the Pay-As-You-Go schemes.
- 3.4** NIPSA would remind the Commission of the points made in the Annex to our original submission, on this issue.
- 3.5** NIPSA welcomed the assessment in the Interim Report at paras 4.76 – 4.95 (inc) of the differences between the LGPS and the Pay-As-You-Go Schemes. In addition NIPSA fully supported the view as expressed at 4.93 that there should be no change to the status/arrangements for the LGPS.
- 3.6** It is therefore more than disappointing that despite the clear differences the LGPS remains within the scope of the Commission. In this regard NIPSA would endorse the points made by both the NJC Trade Union Side

and NILGOSC that the LGPS should have been excluded or at the very least subject to a wholly separate assessment.

#### **4 COMMISSIONS CALL FOR EVIDENCE FOR FINAL REPORT – 25 QUESTIONS**

**4.1** In the comments below NIPSA seeks to address the specific questions as set out in the Commission's call for evidence for the final report, as per the letter of 1 November 2010.

**4.2** The points made below supplement the views already articulated by NIPSA in the original submission, the detailed assessment briefing of the Interim Report (see 1.8 above) and in the points raised by NIPSA Representatives directly to Lord Hutton (see 1.5 above).

#### **4.3 Scheme Design (Q1)**

**4.3.1** NIPSA welcomed the Interim Report recommendation to retain Defined Benefit Schemes as the basis for public sector pension provision.

**4.3.2** NIPSA is opposed to any move away from DB, even as a top-up part of a hybrid scheme. If there is considered to be a need to deal with very high earners then there should be an open debate between the employers and the unions on a suitable capping level.

**4.3.3** The various options will do nothing to address the more serious issue of the low value of public service pensions for the vast majority of scheme members be they current, deferred or pensioner members.

**4.3.4** Any move to hybrid or more complex arrangements will add to scheme administration costs, something the report wishes to see reduced rather than increased. Furthermore, any added complexity will reduce

transparency and make it all the more difficult for scheme members to understand and value.

- 4.3.5** NIPSA does not rule out assessment of a career average scheme but would have to question the robustness of such existing schemes in light of the very serious detrimental impact the RPI to CPI indexation change has had on the value of career average pensions such as NUVOS

#### **4.4 Risk-Sharing (Qs 2-9)**

- 4.4.1** NIPSA rejects the statement in the Commission's letter of 1 November that "in final salary schemes employers bear most risks (and ultimately in the case of public service schemes, taxpayers)". The move from RPI to CPI, associated with very considerable contribution increases with more to come and other benefit changes such as the virtual elimination in some schemes of pension enhancement for redundancy all make the risk sharing an issue for employees as well as others.
- 4.4.2** The Public Service Pension Reforms of circa 5 years ago included across the piste the principle of cost-sharing. Detailed negotiations are ongoing within the LGPS, including the NILGOSC Scheme in Northern Ireland, and other public sector schemes on the methodology, assessment, timing and degree of cost sharing. To not permit the out-workings of these discussions is unacceptable as they are part of the fundamental negotiated reforms to public service pension schemes.
- 4.4.3** The change to the pensionable age for retirement is again an issue addressed by schemes which has yet in the main to be out-worked from the last agreed reforms. There has been no assessment made of the wider economic impact of making people work longer to either draw the

state pension and/or the occupational pension. This adversely impacts on the labour market with reduced opportunities for the unemployed, education leavers or returnees to the Labour market. It also could well have an adverse impact on the health of workers and thus adverse implications for the Health Service.

**4.4.4** Q2 – as per 4.4.1 – 4.4.3 above Scheme members already bear an increasing degree of risk. There can be no justification for any additional burdens when all of this is taken into account.

**4.4.5** Q3 – The move to CPI indexation, introduced without any consultation, has already eroded pension values. NIPSA would press for either a return to RPI or for negotiations with the unions to see if there are more viable forms of indexation. Setting ever increasing pension ages needs to be considered in a much wider context, including assessment of issues such as labour market impact, health and social care implications. There should be serious consideration given to providing for a flexible approach to the retirement age within a 5 to 10 year period so that individuals can choose what is best for them. The actuarial impact is likely to be neutral, especially when linked to the forthcoming changes in the default age.

On indexation for career average the point made directly above is valid, see also comments at 4.3.5.

**4.4.6** Q4 – The private sector position is fairly irrelevant, given the massive withdrawal and closure of DB schemes. In the main all risk is now on employees.

**4.4.7** Q5 – The interim report covered this point and the question is nugatory given the very limited time available for production of the final report.



**4.4.8 Q6** – The real split is unclear and moving and is at this point difficult to accurately determine in view of recent changes and forthcoming issues such as:-

- Roll out cost sharing;
- Increased employee contributions;
- Full assessment of the RPI to CPI indexation changes;
- Schemes triennial review publication;
- Consultation on the appropriate discount rate;
- Changes to retirement age; and
- Potential changes to benefit structure

In addition all of these changes, especially those falling directly on employees will also impact on scheme membership and the consequential cost impact of this. A fair system would at the very most look at on average a 2/3 employer 1/3 employee contribution ratio, but with potential on the employee side to be variable depending upon salary levels.

**4.4.9 Q7** – If the approach taken as proposed at 4.4.5 was applied i.e. the flexible decade of Retirement this could mitigate against the need for differential treatment. There are liable to be justifications for lower retirement ages in certain occupations such as firefighters.

**4.4.10 Q8** – Schemes should provide a common benefit structure and via salary contribution banding those who are deemed to benefit more will contribute more. NIPSA accepts that there is a case for consideration with regard to a salary pension ceiling, however considerable research is necessary to determine what level that should be at.

**4.4.11 Q9** – This is linked to the response at 4.4.5 and 4.4.7 above. There is also the issue of a fair transitional arrangement to any increase in scheme

pension ages, as most people will have planned their arrangements especially their own economic position based on current expected retirement dates.

### **ADEQUACY**

- 4.5.1** The Interim Report makes reference to the Turner Report and it's recommendations on adequate income in retirement. For the very vast majority of pensioners be they in receipt of public service pensions, private sector pensions or solely dependent upon the state pension the fact is that the Turner proposals are vastly removed from the reality of low pensioner income.
- 4.5.2** In NIPSA's original submission (para 2.9.) the case was made for pensions to be based on the European Decency Threshold.
- 4.5.3** Qs 10/11 – The points above these questions.
- 4.5.4** Q12 – Public Service Pensions in conjunction with the payment of the contribution based state pension are critical to ensuring fair and adequate pension provision. Whilst there should be some scope to enhance and/or make up for lost service NIPSA would support not just auto enrolment but mandatory membership of the relevant public service pension scheme.
- 4.5.5** Q13 – Ideally pensions should be portable but due to the lack of adequate private sector pension provision it is unlikely that in the majority of cases transferring public service pensions would represent sound decision making and future good pension provision.
- 4.5.6** The real issue in response to Q13 is to level up the basis of private sector pension provision.

### **Employee Understanding and Choice**

- 4.6.1** Q14 – Members have broad awareness of pension benefits in terms of the structure of the respective scheme. Pensions are certainly valued as deferred pay. There is scope to improve the degree and level of understanding of both the schemes and the benefits of pension provision.
- 4.6.2** Q15 – Scheme design needs to be understandable and the best way of achieving this is single benefit structures such as the existing final salary arrangements. In addition the contribution formula not only needs to be fair but also to be easily understood and applied.
- 4.6.3** Q16 – NIPSA has no evidence of good private sector communication practice. Whilst there can always be improvements in delivering information, broadly speaking the public sector pension schemes have good communication delivery mechanisms.
- 4.6.4** Q17 – As with the point made at 4.5.4 there should be some scope to improve pension provision via mechanisms such as AVCs. The use of the flexible decade of retirement linked to a ceiling of 40 years service for pensionable pay purposes would be fair.

### **PENSIONS AND PLURALITY OF PROVISION OF PUBLIC SERVICES**

- 4.7.1** NIPSA condemns the comments and recommendations in the interim report on Fair Deal.
- 4.7.2** Q18 – The pro externalisation theme for public services based on the unfair and wholly inadequate pension provision by private sector employers is totally rejected by NIPSA.

- 4.7.3** Q19 – NIPSA supports the provisions within the LGPS Schemes on admittance of third parties who deliver public services, if there is to be externalisation of public services then all public service pension schemes should apply the same entry provision as the LGPS.

#### **ADMINISTRATION COSTS**

- 4.8.1** Administration costs rise with both complexity of schemes and continuous changes to scheme regulations. Many schemes are just beginning to move to a settled administrative platform post the changes instituted over the past 5 years.
- 4.8.2** Q20 – The average private sector in-house costs are £47.00 per member and for private sector outsourced costs are £41.00 per member. This compares to the NILGOSC cost of administration of £30.88 per member. However to compare administration effectively requires the calculations to be on the same basis. A scheme with multiple employers (ie an LGPS Scheme) with a high proportion of active members compared to pensioner and deferred members would be much more expensive to administer than a 1 employer scheme (a typical private sector scheme) which may also have a higher proportion of pensioners and deferred members to active members would have a much lower administration cost. It is therefore very difficult to compare administration costs effectively between different schemes but the evidence suggests that the public sector provides very good value for money in pension administration.
- 4.8.3** Q21 – NIPSA has no experience of good quality and efficient scheme administration in the private sector. NIPSA experience in dealing with the private sector for the transfer in and transfer out of pension arrangements has generally been poor resulting in low quality and inefficient

administration when compared to the service provided by Public Sector pension scheme administrators.

**4.8.4 Q22** – This is not applicable to Northern Ireland as there only is one fund.

### **TRANSITION ISSUES**

**4.9.1** Many of the issues covered above such as communications, understanding, pensionable age all require detailed assessment and proper planning as opposed to short-term, ill-thought out politically acceptable responses to public sector pension provision.

**4.9.2 Q23** – Firstly the Commission will have to ensure that there are detailed negotiations on any proposed changes, which requires full engagement with the relevant public service unions.

To ensure an effective transition there must be sufficient time allowed to implement the new scheme. The regulations will require to be accurately drafted and made, the computer software changes required programmed, tested and implemented, the scheme literature and explanatory guides drafted and printed, staff trained in the operation of the new scheme and having it explained to the contributing employers and communicated to the members, pensioners and deferred pensioners.

**4.9.3 Q24** – As with the comments at 4.6.3, 4.7.2 and 4.8.3 NIPSA's experience is that the private sector has nothing to offer, indeed the experience is that when public sector pension administration has been contracted out it has been disastrous.

**4.9.4 Q25** – All the evidence points to abject failure and in some cases abuse if not fraud in changes to private sector pension schemes. It was because

of experiences such as these that the PPF had to be introduced as well as employers defaulting for business failure reasons.

## **5. CONCLUSIONS**

- 5.1** The pay and pension arrangements of the public services must be such as to attract the right calibre of recruit. In doing so a fair total remuneration package must provide for reasonable overall terms and conditions and at the same time be fair to the taxpayer.
- 5.2** The current economic difficulties have not been caused by public servants yet it is public servants who are being targeted. In particular public service pensions have unfairly come under the spotlight. This in the main is due to private sector organisations ill-informed assessment of those pension schemes or Daily Mail type stories that concentrate on the pension arrangements of a few highly paid people in the public service rather than the vast majority of low to moderately paid public servants.
- 5.3** The changes introduced by the Government since June not only undermine the work of the Commission but represent a very serious attack on public service pension provision, in particular the move to CPI.
- 5.4** The evidence is also available to demonstrate that there continues to be major equality issues with regard to the value of public service pensions. Any further attempt to create cost reductions from public service pensions is liable therefore to have greater impact on women thus exacerbating the inequalities. NIPSA demands that all proposals are subject to full equality impact assessment.

- 5.5** Pensions are not only part of the total employment package they are in fact deferred pay and as such recognised by the courts as protected 'possessions'.
- 5.6** The numerous changes to the various public service pension schemes, especially those that rose on foot of the Public Services Forum agreement of 2005 have resulted in very significant additional contribution costs falling on the employee.
- 5.7** Many aspects of the changes still have to be assessed. The 2010 triennial reviews have just become available and need to be examined in detail. In addition provisions for additional changes such as capping and cost sharing will be taken forward post the 2010 triennial reviews.
- 5.8** In the United Kingdom one third of pensioners rely solely on the state for income during their retirement years. Many more have to claim top-up state support as the combined value of the state pension and occupational pension is still below the inadequately low level the state considers as being necessary.
- 5.9** Occupational Pensions therefore either supplement or take pensioners out of state support (other than the earned contribution basis state pension) and considerably reduce the cost of the taxpayer. The continued attacks on public service pensions will significantly change this picture. In fact, for many of the lowest paid public servants it would make more sense to opt-out of the pension schemes as over their working life and retirement they would be financially better off. This is especially so given the CPI move and Public Sector Pay freezes.
- 5.10** Public Sector Pension Schemes have and are addressing the impact of the demographic changes impacting upon pension costs. The basis of

that reform is built upon sustainability and affordability. Further attacks on public service pension schemes will disincentivise scheme membership, re-enforce pension poverty, add costs going forward directly onto the taxpayer via means tested benefits and increase proportionally scheme costs.

**5.11** The real pension problem in the UK is the private sectors retreat from providing fair and reasonable occupational pensions. Over two thirds of private sector employees have no occupational pension. The picture is of course dramatically different for senior executives and the Boardroom who have unjustifiable excessive 'rhodium plated' pensions, many in excess of £1m per annum. The retreat from occupational pensions is at a cost to the taxpayer having to provide means-tested top-up payments, to pensioners.

**5.12** NIPSA calls on the Commission to ignore the continual attacks on public sector pensions, which come from right-wing pressure groups voiced through the media controlled by them and wholly opposed to public services or by those employers who have abandoned occupational pension schemes. Public Service Pensions are already sustainable, transparent, affordable, plus they are subject to ongoing reform.



**DWP WHITEPAPER: The Single-tier Pension: A Simple foundation for saving**  
**(Jan 2013)**

**Para No**      **Executive Summary**

2.            NIPSA is not only opposed to the increase in State Pension Age (SPA) but in the linking of SPA to Normal Retirement Age (NRA) as prescribed for in the Public Service Pensions Bill.

4.            The proposals of the draft Pensions Bill further adversely impact on the sustainability of occupational pension schemes and in particular Defined Benefit (DB) schemes, especially public sector pension schemes. The dual impact of the Pensions Bill and the Public Service Pensions Bill will raise genuine issues of sustainability for many of the schemes.

The termination of contracting out will also spell the death knell for many of the remaining private sector DB schemes. This will result in increased numbers of workers leaving occupational pension schemes or at best a movement to Defined Contribution/Money Purchase schemes which historically have failed to deliver decent pensions and/or resulted in either rip-off schemes or provide /lavish returns for investment managers/annuity providers and very poor value for the employee.

5.            The Turner Report made very strong recommendations as to the proportionate income percentage needed for pension value vis-à-vis pay levels. The Pensions Bill totally fails to move forward in line with the Turner recommendations on this aspect (see para 32 of Appendix 1 the NIPSA response to the Green Paper).

6. The support to people saving for retirement is highly swayed in favour of the most wealthy in society: 60 per cent of the gross tax relief – more than £22 billion a year (going) to higher rate tax payers.
7. Whilst auto-enrolment is to be welcomed the current arrangements and associated NEST provisions are very limited.
11. NIPSA was one of the organisations that submitted comments on the Green Paper (see Appendix 1). NIPSA considers that the Pensions Bill and other related initiatives such as; Public Service Pensions Bill, Welfare Reform and other aspects of the Government's Austerity Programme do nothing to improve the position of current pensioners and those who will retire (albeit delayed retirement due to increases in SPA and NRA) in forthcoming years and decades.
19. The proposals can only but undermine DB schemes (see 4 above). It is wholly unacceptable for the Government to promote the position that employers can offset additional NI contributions by **"reducing future pension benefits or by increasing employee contribution costs"**.
29. The real position of the Government is made somewhat transparent by confirming that the aim of the proposals are to reduce public expenditure by bringing projected GDP expenditure down from 8.5% to 8.1% by 2060.
31. There are clear concerns as to the future of the current triple-lock approach to uprating.

**Para No    Section 1 – The Context for Reform**

3. This ignores the implications of the on-going Welfare Reforms which will result in further embedding pensioner poverty.

4. NIPSA fully accepts that the current system is overly complex and off-putting resulting in low take-up of pension credit and wholly inadequate. NIPSA wishes to see a fair, simple system that eradicates pensioner poverty, these proposals fail on all counts.
5. See comments in respect of paras 5 and 31 Executive Summary. The proposed introductory flat rate pension of £144 is 13% below the current pensioner poverty rate of £165. The 18% value of mean full-time earnings is indecent and will ensure that the UK remains at the bottom of the EU and the OECD league tables for state pension values. No comfort can be taken to the references to bus passes, TV licences etc, especially as caveated by "under current plans, the Government will continue."
6. See comments on para 6 of Executive Summary. Tax relief for the top 1% of those earning more than £150,000 is more than £8bn and for all higher rate taxpayers £20bn plus. These reliefs should be ended and directed to providing additional resources to eradicate pensioner poverty. Real action is needed to restore confidence in occupational pensions not least in DC Schemes for which UK assets fell by 1/3 between September 07 and February 09.
8. It is wholly erroneous to state "that many current pensioners have access to relatively generous DB schemes." For Public Service DB Schemes over half of pensioners receive less than £5,600 pa and in the LGPS women's pension is circa £2,800. When you consider the state underpin very many of these pensioners are by and large substituting their occupational pension for pension credit entitlement.
9. See 5 above re the position of the UK in respect of other developed countries relative pension position.
10. The race away from DB schemes by private sector employers can only be exacerbated by the end of contracting-out. Between 2004 and 2007

there was a 25% fall in private sector workers in DB Schemes. Since 1967 when there were 8 million pension scheme members in the private sector we have witnessed a race to the bottom and these proposals will enhance the pace of decline.

14. NIPSA would question how the 1/3 figure has been arrived at and would suggest it will be higher and added to post 2017 when contracting-out goes with the burden mainly passed to employees (see comments para 19 Executive Summary).
15. See comments on para 7 of Executive Summary.
16. The Government has totally failed to reinvigorate workplace pensions, other than for the most wealthy. The public knows only too well what "risk-sharing" means – massive unchecked bonuses for investment bankers and their fellow travellers in the pensions industry whilst pension pots fall massively in value and the public purse accepts the total cost of the casino risk takers.
22. As the single flat rate proposals apply for those who qualify post 2017 the current inadequate flawed system will pertain for decades to come in a dual system and hence more administratively complex system. Government is therefore continuing to embed pensioner poverty and doing next to nothing to get to the 1/3 pensioners who whilst entitled are not currently claiming pension credit to avail of it.
27. The equalisation provisions are of course perverse in that women's age of SPA entitlement is extended and that for years to come the system continues to perpetuate inequality.

## **Section 2 – The Single-Tier Pension**

- 33. The move to a contribution record based on 35 years represents a 16.66% increase in requirement, from the current 30 years. It would be more appropriate to move in line with the SPA increase ie from 30 – 31 in 2020 and 32 from 2026.
- 40. The level of means-tested pension credit support still leaves millions of UK pensioners in pension poverty.
- 41. The five year period will still result in a cliff edge impact.

## **Section 3 Managing the end of contracting out**

- 59. NIPSA strongly objects to the potential erosion of schemes and taking certain powers away from Trustees to give to employers.
- 61. There can be no guarantee that the impact will not undermine DB schemes. This linked to para 59 is liable to result in higher levels of employee opt-out and hence damage scheme sustainability.
- 69-71. The proposed changes on top of the attacks by the government on public service pension schemes calls into question not only the purported “25 year guarantee” but also the government’s position in the negotiations, as clearly removing the contracting-out provision was a well advanced policy consideration.

The government needs to be absolute at an early stage as to what it means by “Public Service employers will therefore not be able to pass the cost of increased NI contributions onto their employees . . . . et seq.” Does this mean **all costs** including the additional employee NI contributions?

#### **Section 4 The Transition to the single-tier pension**

103. The costs control and the aim by 2060 to reduce GDP outlay (see para 29 Executive Summary) will therefore retain the relative levels of pensioner poverty. In addition by 2060 the impact of the employer flight away from occupational pensions of the past 20 years and the likely high levels of employee op-out will place more pensioners into being dependent upon the state pension as their sole basis for income.
109. DWP should establish immediately a robust online pension estimate calculator covering the current scheme, transitional arrangements and steady state flat rate pension scenarios.

#### **Section 5 – Sustainability and assumptions**

110. This para again confirms that what underpins the government's approach is cost cutting albeit in the medium to longer term.
113. Given that this government has proven to be wholly incapable of short-term economic forecasting no confidence can be taken from these longer term forecasts.
117. Historical approaches have resulted in the devaluation of the state pension vis-à-vis earnings growth, this is confirmed at para 119.
121. The triple lock assumption is of little value, it needs to be guaranteed via being established on the face of the bill.
122. This would go a little way to improving the value of state pensions and is a nod albeit a limited one in the direction of the Turner Report.

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**Section 6 – Longer-Term sustainability: State Pension Age**

127. Little or no work has been carried out as to the impact on youth/graduate unemployment, women returners to the labour market as a consequence of increasing the SPA and the NRA link to it for public sector schemes. It is also likely to fuel the casualization, part-time and under utilisation of workers. Likewise the impact of the "grey pound" has not been assessed.
130. Again there has been little assessment of the labour market implications as a consequence of the removal of the default age.
134. This needs to be properly assessed taking account of the comments above on paras 127 and 130.
- 141-155. NIPSA as recorded in this response and in numerous other consultations strongly opposes increases in SPA and the NRA linkage. Government should provide for a more flexible approach to retirement providing people with choice, many will opt to remain in work or take flexible retirement whilst others would opt to go at existing NRAs. Such provisions should therefore retain 65 or at worst 66 as SPA and for existing NRA there should be no actuarial reductions enforced.
161. As with para 127 above there is a need to fully assess the labour market implications.

DWP Whitepaper

APPENDIX 1

**DWP GREEN PAPER  
A STATE PENSION FOR THE  
21<sup>ST</sup> CENTURY**

**NIPSA RESPONSE**

June 2011



### Introduction

1. NIPSA is concerned with the fragmented approach being taken by the Government to the issue of pensions, both in respect of the State Pension and for occupational pensions especially with regard to public service pensions.
2. Since the election of the Government in 2010 there have been numerous reviews and changes to pension provision, these include:-
  - Indexation move from RPI to CPI
  - Hutton Public Service Pensions Commission
  - Increased subscriptions for public service pension scheme employees
  - Early access to Pension Savings
  - Taxation changes
  - Changes to State Pension Age (SPA)
  - Review of the Discount rate
  - McFall Commission 'Workplace Retirement Income Commission

and now the Green Paper – "A State Pension for the 21<sup>st</sup> Century".

3. In addition to the numerous interventions by the UK Government there has also been the European Green Paper – 'Towards Adequate, Sustainable and Safe European Pension Systems.'
4. It is clear that the UK Government's approach to the wider pension debate be that as an employer or as the provider of Social Security Benefits is to further penalise ordinary workers be they in employment or in receipt of pensions. The Government is fixated with it's deficit reduction plans and via pension reform seeks to again place the burden on working people (including the retired).
5. The Government totally fails to address the fact that in the UK 2.5m pensioners live below the official poverty line, defined as 60% median population income (based on 2007/08 figures). None of this Government's actions or its predecessor have addressed pensioner poverty in fact in 2009/10 pension poverty rose by 300,000 or by 822 people per day.

6. Approximately 61% of pensioner couples have an income of less than £15,000, whilst 45% of all single pensioners have an annual income of less than £10,000.
7. From the Minister's Foreward it is clear that the Government's objective is to place greater responsibilities on individuals providing for their retirement income. The consultation document is littered with references to the outworkings of any change having to be 'cost neutral'.
8. At no point is there a recognition that the UK is bottom of the European League in respect of the value of the State Pension (basic and second) as a proportion of average working pay. The UK percentage is 30.6% compared to for example:- Ireland 32.5%, France 51.2% or the Netherlands at 81.9%. The UK is some 29.4% behind the EU average of 60%.
9. NIPSA believes that there is an obligation on the State to ensure that no-one lives in poverty and that the State must provide a pension that meets this requirement. This pension should be supplemented via decent occupational pensions that should be of a defined benefit (DB) nature with mandatory employer/employee contributions based around a fair ratio of contributions.
10. Whilst the above comments and in particular those that follow relate to the current debate on pension provision NIPSA does not believe that the Government's approach will lift pensioners out of poverty nor meet the Turner Commission recommendations on income replacement.

#### Executive Summary

11. With regard to the four guiding principles NIPSA has a number of concerns:-
  - Personal responsibility – the failure to include the employers role is unacceptable
  - Fairness – the right to a basic pension income that meets the poverty threshold should not be based on contributions. There is clear scope for payment over and above the poverty threshold that is based upon NI contributions.
  - Affordability and sustainability – NIPSA does not accept that the approach for provision of state pensions should be cost neutral. As

referred to at para 8 the UK is at the bottom of the European league with regards to the value of pensions as a proportion of average working pay. To lift pensioners out of poverty and to meet the Turner report on adequacy there is a clear requirement to increase the proportion of public expenditure on state pensions.

12. It is foolish to bank on auto-enrolment, it is likely that many people will opt-out and that the administration costs in pension schemes will rise considerably.
13. NIPSA would not dispute the difficulties created via means testing and that for many pensioners they feel stigmatized in applying for pension credit. The process also does little to address the inherent inequalities in pension provision, both state and occupational pensions. The options for a revised system as proposed in the Green Paper do little to provide for decency in retirement and seek to put more of the burden on individuals as opposed to the state and employers.
14. The Government has failed to address, in fact it has aided and abetted the retreat from decent and fair occupational pensions by employers. At the same time it has done very little to address the outlandish actions at Boardroom level in creaming off unjustifiable pension funds for the elite.
15. Regardless of the outcome of the current examination of pensions, stability must be brought back so that people, especially those within 10/15 years of the SPA know what their entitlements will be, including those in occupational schemes in order that they can make a considered plan for their retirement.

#### Chapter 1 – The Current Pension System

16. It is clear to the bulk of commentators that the existing system is failing working people and that the value of the state pension including pension credit and the state second pension does not provide an adequate or decent standard of living for pensioners.
17. Whilst the demographic trends have improved rapidly over recent decades they are beginning to slow, in addition no work has been carried out to assess the impact on life expectancy by the increase in SPA. This is especially so for manual employees and for those living in areas such as Northern Ireland,

Glasgow and the North East of England who have much higher mortality rates.

18. NIPSA is concerned that the recent NAPF research for YouGov identified that 34% of respondents indicated that they are relying on the state pension only. In addition 17% are dependent upon property investment at a time when a very high percentage of home owners are in negative equity.
19. The nature of British Society is also borne out by the NAPF survey with 8% banking on a lottery win and 9% on inheritance windfall to fund their retirement. As per para 9 there is a need to ensure that the state pension is supplemented by decent occupational pensions.
20. The current structure of the state pension is not only complex it also discourages participation in occupational pension schemes, especially for the low paid the bulk of whom are women and hence the endemic inequalities in UK pension provision. The variable withdrawal rates on income/savings of up to £184pa are a clear disincentive for the lower paid to participate in occupational pension schemes.
21. The current and proposed safety nets fall well below what is necessary to take pensioners out of poverty.
22. Whilst NIPSA does not accept the cost neutral policy of the Green Paper it is clear from para 53 that there is currently circa £2.9 billion that should be paid out to pensioners and that this provides some albeit limited finances to improve upon the inadequate pension rates currently paid.
23. It is clear to all that the answer to question 1 is a definitive 'no'. The current system is failing millions of pensioners and increasing the level of pensioner poverty.

#### Chapter 2 – Options for State Pension Reform

24. The Government seeks to cover itself with credit in respect of the comments at para 62 with regard to the "triple guarantee" whilst conveniently ignoring the impact of the indexation impact in moving from RPI to CPI.

25. At paras 75-81 the case against option 1 is compelling. Option 1 does little to provide for real improvements and takes too long to work through, thus enshrining inequalities for decades to come.
26. The dependency on the second state pension only encourages further retreat by private sector employers from provision of occupational pensions.
27. There is also a falsification of the maximum qualifying years "49/50 from 16 to 65/66" only a very small minority of the working population meet this, in fact for many who progress through the education system it will be age 24/25 before they contemplate entering the labour market. For many other young people they are deprived from building up pension entitlement due to mass youth unemployment.
28. In respect of Option 2, NIPSA does not accept that a value of £140 pa is adequate and totally rejects the cost neutral stance.
29. NIPSA is very concerned that with the changes to public service pensions, including considerable increased employee contributions, and the already announced stealth tax on pension funds via a reduction in the contracted out rebate from 5.3% to 4.8% this will exacerbate the withdrawal rates from occupational pension schemes.
30. To go further under option 2 with the abolition of the contracting out rebate will result in yet more employers closing DB schemes and employees leaving on mass. The Government should be seeking to support workplace pension schemes rather than adding extra costs unto them.
31. The Hutton Commission addressed this issue and whilst NIPSA mainly opposed the Commission's recommendations it by and large did get it right in it's comments on the contracting-out rebate.
32. NIPSA believes that there should be a single-tier pension set at a level that meets peoples needs and that via occupational pensions the combination should provide for pensioner income that is at least at the levels recommended by Turner:-

**Benchmark replacement rates set out by Lord Turner's Pensions Commission**

| Gross income      | Benchmark gross replacement rate (%) |
|-------------------|--------------------------------------|
| Less than £9,500  | 80                                   |
| £9,500 - £17,499  | 70                                   |
| £17,500 - £24,999 | 67                                   |
| £25,000 - £49,999 | 60                                   |
| £50,000 and above | 50                                   |

Source: Pensions Commission

33. There is an acknowledged need for the state to provide an equivalent occupational scheme for the self employed and for employers with a small workforce. This should be a funded scheme similar to the LGPS with arrangements to ensure that employers, self-employed and employees are represented on the equivalent of a Board of Trustees.

### Chapter 3 – Means-Tested Safety Net For Pensioners

34. If the Government was to adopt the approach as set out by NIPSA in this response there should be no need for any safety net.
35. It is clear that as the Green Paper suggests itself e.g para 53 that the current means tested system fails.
36. The floor for pension provision should be a guarantee to all pensioners of a minimal entitlement that is at a level above the poverty line (£178 pw as per the National Pensioners Convention for 2011). The pension should increase each year via RPI. The state pension should be topped up via an occupational pension with no offsetting. The tax system should deal with income rather than offsetting via Social Security, otherwise the system is not only complex but adds to opt-outs.

### Chapter 4 – State Pension Age

37. NIPSA commented on the Consultation Paper (9/8/10) on moving the SPA to age 66 and would refer to that submission.
38. It is clear from the debate in the House of Commons of 20 June that many MPs are concerned as to the impact on moving the SPA to age 66 especially

with such little notice. As per para 15 above there needs to be proper notice of such changes and transitional arrangements to ensure that people can properly plan for their retirement.

- 39. Changing the SPA also has wider labour market implications, especially in respect of reducing opportunities for education leavers and returnees to the labour market to find employment.
- 40. Increasing the SPA is also likely to adversely impact on those in manual employment, see para 17 above.
- 41. NIPSA broadly would endorse para 146 as this would help address the points raised above at paras 17 and 40.

### Conclusions

- 42. NIPSA does not believe that the Green Paper will make any significant improvements to pension provision nor to adequate levels of income in retirement.
- 43. Some of the direction of travel eg reduction/abolition of the Contracting-Out Rebate will only further damage availability and membership of DB occupational pension schemes.
- 44. It is wholly unrealistic for the Government to adopt a cost neutral approach if the UK is to move from being bottom of the European league in pension provision and more importantly to see positive movement in the eradication of pensioner poverty.
- 45. NIPSA reiterates its call for the state to provide a flat rate state pension set at a level above the current poverty line of £178pw to be supplemented via occupational pensions (see paras 32/33 above).
- 46. Occupational Pensions should be DB and as such should provide for portability that does not reduce the value/acquired rights of employees on transfer from one employer scheme to another.
- 47. NIPSA calls on the Government to reverse its punitive decision to switch indexation from RPI to CPI, both for state pension provision and for all public sector occupational schemes.

## NASUWT response — 23.08.2013



**CONSULTATION  
RESPONSE**

**Northern Ireland Assembly Public Service Pensions Bill  
Response to call for Evidence by the Committee for Finance  
and Personnel  
August 30<sup>th</sup> 2013**

1. The NASUWT welcomes the opportunity to comment on the Northern Ireland Public Service Pensions Bill.
2. The NASUWT is the largest teachers' union in Northern Ireland representing teachers and school leaders.
3. The Public Service Pensions Bill brings about the most significant reform to Northern Ireland public service pensions for decades, deteriorating public service workers' pensions in a number of ways. This will impact enormously in Northern Ireland because of the high percentage of the population working in the public sector. The Northern Ireland Statistics and Research Agency (NISRA) reports that 31 per cent of workers are employed in the Northern Ireland public sector, compared with 19.3 per cent in the UK as a whole.<sup>1</sup>
4. Despite the initial welcome stated intention to seek to avoid adopting the British Government's approach to pensions, the Northern Ireland Assembly risks adopting the punitive elements of the British Government's Public Service Pensions Act, deteriorating public sector workers' pensions on the spurious claim that they are "unaffordable".

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<sup>1</sup> *Public Sector Employment Statistical Bulletin*, March 20, 2013



5. Despite the pressure being exerted by the British Government the NASUWT urges the Northern Ireland Assembly to adopt its own approach.

### **Is there a need for Public Service Pensions Reform?**

#### **Affordability – myths and realities**

6. During the debate on the Second Stage of the Public Service Pensions Bill, on 25th June 2013, the Minister for Finance and Personnel stated that, *'The Bill provides a necessary reform to manage the long-term costs of public service pension provision...It is also an equitable and fair way to ensure a fairer and sustainable distribution of the costs of public service pensions between employees and employers, with employers in this instance ultimately being the taxpayer.'*
7. However, it is simply untrue to say that public service pensions are unaffordable and need to be reformed.
8. Along with other public service pension schemes in Britain, the Northern Ireland Teachers' Pension Scheme (NITPS) underwent substantial change in 2005/6 which was designed to ensure that it remained viable, sustainable and affordable in the long term.
9. A number of significant amendments were agreed in 2005/6, including: the raising of the retirement age to 65 for new entrants to the profession; the change in the accrual rate from 80ths (with an automatic lump sum entitlement of three times salary) to 60ths for all future service; and significant increases in employee contributions from 6 per cent to 6.4 per cent for all scheme members. These have now increased to a maximum of 11.2 per cent, with only very few teachers who earn less than £15,000 per year paying 6.4 per cent (all contributions are based on a full-time equivalent pay level). In this respect, the summary of the NITPS in Annex C (Page 21) of the

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Department of Finance and Personnel's Response to Consultation (7<sup>th</sup> June 2013) is incorrect.

10. The changes included specific provision to cap future employer costs in the form of 'cap and share' arrangements, under which increases in costs due to demographic factors, such as increases in longevity, would be shared equally between employee and employer contributions, with the employers' contributions subject to 'capping'. Employees would therefore bear the cost through increased contributions, following pension scheme valuations.
11. It was asserted at the time by unions, employers and ministers that the changes represented '*a good and fair balance between the interests of teachers and taxpayers*' while '*ensuring the long-term sustainability and affordability of the TPS*'<sup>2</sup>.
12. The changes agreed in 2005/6 will still result in significant savings over time - worth around £1.25 - £1.5 billion a year across the public service schemes and substantially more in the long term.

### **Changes to accounting**

13. In 2011, the British Government reduced the discount rate for unfunded public service pension schemes, including the teachers' pension scheme, from Retail Prices Index (RPI) plus 3.5 per cent to Consumer Prices Index (CPI) plus 3 per cent, which affects all public service pension schemes apart from the Local Government Pension Scheme (LGPS). The discount rate governs the amount by which a notional public service pension fund '*grows*' in value, because a notional fund cannot be invested in the same way as funded pensions.

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<sup>2</sup> TPS Joint Statement issued by the Department for Education and Skills (DfES), the teachers' side of the Teachers' Superannuation Working Party (TSWP) and the employers' side of the TSWP, 2005.

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14. Despite previous governments agreeing the RPI + 3.5 per cent discount rate, the British Government refused to listen to the views of the NASUWT and the TUC and proceeded with the reduction in the discount rate. This increases the cost of public sector pensions and enables the British Government to claim that there is an affordability crisis.

### **The Hutton Review**

15. In 2011, the British Government accepted the findings of the Independent Public Services Pensions Commission (IPSPC) it had set up under the Chairmanship of Lord Hutton to carry out a fundamental structural review of public service pension provision, and declared that it would implement the recommendations of the IPSPC Report *'without cherry-picking'*.
16. In the foreword to the Interim Report of the IPSPC, Lord Hutton made clear that while there was a case for reform, he rejected the downward drift in pension provision in the private sector as justification for *'a race to the bottom'* with pensions in the public sector and expressed his hope that reformed public service pensions *'can be seen as once again providing a benchmark for the private sector to aim towards'*. The proposals for reform to public service pensions in the Public Service Pensions Bill disregard the IPSPC's recommendations in this respect.

### **Public Sector pensions are not gold-plated**

17. The average pension in local government is currently around just £4,000 per year and just £2,000 for women. In the Civil Service the average is £6,500. The average pension for a female NHS worker is £5,000 but the median pension for women is much less. In fact, half of all women pensioners who have worked in the NHS get a pension of less than £3,500 per year. These can hardly be described as gold plated.

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### **Resisting the threats from Westminster**

18. The British Government is threatening to reduce the Block Grant by a figure of between £262 million and £300 million per year if the Public Service Pensions Bill in Northern Ireland is not passed. This is unacceptable.
19. The Minister for Education in Northern Ireland is on record as saying that he does not believe that public sector pensions should be a means by which the Treasury can increase its revenue, especially at a time of a public sector pay freeze, increases in national insurance contributions, higher VAT and rising inflation.
20. The NASUWT welcomes the Minister's opposition to the British Government's policy of using public sector pension reforms to increase revenue for the Exchequer.
21. It remains the case that the administration in Northern Ireland has a choice and the NASUWT believes that the choice should be made to refuse to implement the public service pension changes.
22. The Northern Ireland Assembly should join the NASUWT's call for the true financial position of the Northern Ireland Teachers' Pension Scheme, together with other public service pension schemes, to be established through the long overdue actuarial valuation of the schemes to enable a sound financial appraisal to be made. This should be carried out allowing for a discount rate of RPI + 3.5 per cent, so that the Northern Ireland Assembly genuinely can evaluate whether there is a need to reform public service workers' pensions.

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### **The impact on the Northern Ireland Economy**

23. The Public Service Pensions Bill will bring about a number of key deteriorations to public service workers' pensions. Public service workers will have to work longer to receive reduced benefits and will have to pay more for them. For example, In spite of a 50 per cent increase in pension contributions, on average, teachers will face a 33per cent decrease in the value of their pension benefits after 2015<sup>3</sup>.
24. The impact across all members of the Teachers' Pension Scheme will be to reduce, on average, the value of the pension benefit (based on the Effective Employee Benefit Rate) from 23 per cent of a member's salary before the proposed reforms to 14 per cent of a member's salary after the British Government's proposed reforms, a reduction of more than a third. The Effective Employee Benefit Rate of a particular pension scheme is calculated by translating the value of the pension benefit offered in the scheme into an equivalent percentage of salary that the scheme member would need to be given to compensate for the loss of the pension scheme.<sup>4</sup> The British Government's unilateral decision in 2010 to change the basis for public service pension indexation from the RPI to the lower CPI has already reduced the value of the pension benefit received by members of the four largest schemes by 5per cent from around 28 per cent of salary, on average, to around 23 per cent of a member's salary before the other changes are made.
25. One of the key features of the Public Service Pensions Bill is to make the public service pension age and the state pension age the same. This pre-supposes that public service workers will wait to take their pensions until they receive a state pension. If they try to access their public service pension before this, it will be actuarially reduced.

<sup>3</sup> according to the latest research from the Pensions Policy Institute into the implications of the Coalition Government's public service pension reforms

<sup>4</sup> [www.pensionspolicyinstitute.org.uk/default.asp?p=12&publication=332](http://www.pensionspolicyinstitute.org.uk/default.asp?p=12&publication=332)

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26. However, the British Government has fully accepted that many public service workers will need to take their pension at the age that they do now. In its assumptions about the Teachers' Pension Scheme in England and Wales, the Government assumes that this will be the case for most teachers for the foreseeable future.
27. Therefore in addition to receiving lower pension benefits as a result of scheme reform, public service workers will then suffer an actuarial reduction in their pensions, reducing the value of their pension even further. For example, if a teacher with a state pension age of 68 retires at 60, they will lose approximately one third of their pension benefits through actuarial reduction, benefits which have already been reduced through pension reform. This problem will worsen if the state pension age continues to increase beyond 68, which the current British Government Pensions Bill allows.
28. Given the already low values of many public service workers' pensions, particularly for women who often take time out of pensionable service to raise families, the Public Service Pensions Bill will plunge many public service workers into pensioner poverty. The impact of the Public Service Pensions Bill will therefore be to reduce dramatically public service pensioners' spending contributions to the Northern Ireland economy.
29. Despite this, the Department for Finance and Personnel considers that it is unnecessary to carry out a macro-economic analysis of the impact of the Public Service Pensions Bill, despite admitting, in correspondence to the Committee for Finance and Personnel on 7th June 2013, that, *'...it is accepted that public sector pension reform will have impact in the longer term of the disposable incomes of those public sector employees affected.'* The NASUWT considers this to be reckless.

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### **The Impact of increasing the Pension Age on Recently Qualified Teacher Employment**

30. The General Teaching Council for Northern Ireland (GTCNI), which is the statutory, independent, regulatory body for the teaching profession, has stated, *'The significant increase in the number of unemployed teachers over the past four years or so has been a growing concern.'* Even without carrying out a detailed analysis of the impact of increasing the pension age for teachers, it is clear that the continuing scandalous position of the high level of recently qualified teacher unemployment will be exacerbated by the reduction in teacher vacancies caused by teachers having to work for many more years before they receive an adequate pension.

### **The Equality Impact of the Public Service Pensions Bill**

31. The Department of Finance and Personnel has decided not to carry out an Equality Impact Assessment (EQIA) on the impact of the Public Service Pensions Bill, although it admits that it has not collected data to be able to assess the impact of pension reform on different categories of public sector worker.<sup>5</sup>
32. The Public Service Pensions Bill has considerable equality implications. Young teachers face particular discrimination, because of the equalisation of the state pension age and the normal pension age. In particular, the design of the post-2015 pension schemes includes costly *'flexibilities'* which can be purchased to ensure that public service workers can retire at a reasonable age by taking an actuarial reduction. These *'flexibilities'* will have to be bought by pension contributions made in addition to the increases of around 50 per cent which many public service workers have already had to endure. Women, young and minority ethnic workers and those with disabilities are

<sup>5</sup> DFPNI Equality Screening, 29 January 2013

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disproportionately represented in lower paid categories and will be unable to afford the *'flexibilities'*.

33. In addition, the uniformed services pension age is set at 60 in the Public Service Pensions Bill. This is far more favourable than the pension age for the Teachers' Pension Scheme, which will be 68 (and rising) for younger teachers. The uniformed services tend to be predominately male, whereas in Northern Ireland 75.9 per cent of all teachers are female<sup>6</sup>.
34. The NASUWT believes that an EIA should be carried out immediately.

#### **Other Features of the Northern Ireland Public Service Pensions Bill**

35. Clause 8 in the Bill gives express new powers to the DFP to define and redefine at will the arrangements for public service pension provision in future, on the basis either of 'defined benefit' schemes (as described in the Proposed Final Agreement for implementation in 2015) or on the basis of a 'defined contribution' scheme or 'a scheme of any other description' as may be determined at any time by DFP. The power to redefine the types of pension scheme that may in future operate for Northern Ireland public service employees, by reference only to a negative resolution, is excessive in the extreme and would make it impossible for teachers and other public service workers to plan with any degree of confidence for their future retirement. The DFP defines a negative resolution as follows: *'A statutory rule going through this procedure will automatically become law unless the Assembly objects.'* The NASUWT believes that changes to pensions should require the full consideration of the democratic process and not be vulnerable to a negative resolution process.

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<sup>6</sup> *Teacher Workforce Statistics in Grant Aided schools in Northern Ireland 2012/13*, Northern Ireland Statistics and Research Agency, 20 June 2013



36. The NASUWT believes that the discretion sought by the Northern Ireland Executive to allow the DFP to determine the type of pension scheme arrangements will be damaging to the confidence of actual and potential scheme members.
37. The NASUWT believes that the Bill should be amended to limit the powers of the DFP in this regard.

### **Clause 9**

38. This clause deals with the annual revaluation of pensions entitlements earned by serving members. The Bill as drafted provides the DFP with extensive discretionary powers to control and change the basis for pensions indexation with reference to the general level of prices or earnings or any other measure. Seeking to grant the DFP such considerable scope to determine and to vary the pension indexation measure to be used as envisaged, will increase levels of uncertainty and unpredictability for scheme members and further undermine the confidence of teachers and other public service employees in the value of public service pension schemes.
39. Such a provision is contrary to the recommendation of the IPSPC that *'pension benefits should be uprated in line with average earnings during the accrual phase for active scheme members'* (Recommendation 8).
40. Furthermore, the draft Bill allows for accrued pensions to be increased or decreased as specified by the DFP, in effect reducing the members' accrued benefits. This is a further breach of the commitment set out in the British Government's agreement and programme for government to protect accrued pension rights, which the Northern Ireland Assembly has agreed to adopt.

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41. The NASUWT does not believe that such matters should be remitted to the DFP. They are too important and too significant to be left to a negative resolution. The Bill as drafted should be amended to protect the retirement commitments and provide stability and certainty for workers.
42. Linked to clauses 8 and 9, is Clause 24 (2), which enables further deteriorations to be made to pension provision without having to introduce new legislation. This mirrors the provisions in the British Government's Public Service Pensions Act, so even after extensive reform and detrimental change, public service workers' pensions remain vulnerable to further detrimental change. The Northern Ireland Assembly has the power to reject Clause 24 (2) and the NASUWT calls upon it to do so. If in future, further change is needed, full legislative provision should be required.
43. The NASUWT is particularly concerned that Clause 10(4) requires that future changes to the normal pension age (NPA) '*must ... apply in relation to all the benefits (including benefits already accrued under the scheme)*', further breaking the commitment previously given by the British Government to protect accrued pension rights and contradicting the view of the IPSPC that '*protecting accrued rights is a prerequisite for reform both to build trust and confidence and to protect current workers from a sudden change in their pension benefits or pension age*'.
44. This clause of the Bill should be substantially amended to remove the automatic link with the state pension age, to allow for a lower pension age than 68 for teachers (to be determined, in consultation with stakeholders, in light of emerging evidence and trends) and to preserve the commitment to protect accrued pension rights in respect of any future changes to public service pension scheme arrangements. The NASUWT opposes any increase in the existing normal pension age and the link to the state pension age.

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## Conclusion

45. The principles for reform of the teachers', NHS and Civil Service pension schemes agreed by the NASUWT and other trade unions in 2005 recognised:
- the role of good pensions as a key element of the overall remuneration package and in supporting recruitment and retention;
  - public service pensions are a key benefit of public service employment and should be celebrated as such;
  - schemes should continue to guarantee defined benefit provision, linked to an individual's earnings;
  - schemes should also offer indexation to protect retired members against rises in the cost of living;
  - the accrued pensions rights of the existing workforce will be fully protected in the event of transition.
46. The NASUWT urges the Committee for Finance and Personnel to consider carefully the implications of this submission in the context of these principles and the need:
- to use the flexibilities available to mitigate the detrimental post-2015 features of the NITPS.
  - to ensure, at the very least, that the transitional protection for existing members of the NITPS, consisting of 10 years transitional protection and 3½ years of phased protection, should be applied to all existing members of the Teachers' Pension Scheme **as at 2015**.
47. The NASUWT believes that the current Northern Ireland Teachers' Pension Scheme is a sustainable scheme which has already been through the significant reforms necessary to ensure that it remains viable in the long term.

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Chris Keates (Ms)  
**General Secretary**

For further information on the Union's response, contact

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# NILGA response (1) – 28.08.2013



COMMITTEE FOR

28 AUG 2013

F & P

19<sup>th</sup> August 2013

Committee Clerk  
Committee for Finance and Personnel  
Room 419  
Parliament Buildings  
Ballymiscaw  
Stormont  
Belfast  
BT4 3XX

Dear sir/ madam,

## Call for Evidence - Public Service Pensions Bill

The Northern Ireland Local Government Association (NILGA) is the representative body for the twenty six district councils in Northern Ireland. Our councils have a direct interest in particular in the Northern Ireland Local Government Pension Scheme (LGPS) as it was established to provide pensions to the local government workforce on behalf of district councils.

Local councils in Northern Ireland employ some 11,600 people, the considerable majority of whom are members of the LGPS.

We wish to comment on those clauses of the Bill relating to Governance (clauses 4 to 7) and in particular on clause 5(2) and clause 7.

## Governance

NILGA supports the outline of governance requirements contained in the Bill. In making those high level requirements operational our priorities are to ensure that governance arrangements are both effective and efficient. Effective in terms of proper oversight, scrutiny, decision taking and separation of roles and efficient in terms of having structures which are not unnecessarily unwieldy or which place an undue financial burden on the scheme.

The Bill sets out governance roles for public sector pension schemes by identifying essentially four key roles:

- **Responsible Authority** - the person who makes regulations for the scheme (Clause 2). In the case of the LGPS this is the Department of the Environment (Schedule 2) with the consent of the Department of Finance and Personnel (Clause 3).
- **Scheme Manager** - the person responsible for managing or administering the scheme (Clause 4).
- **Pension Board** - a board with responsibility for assisting the scheme manager in securing compliance with scheme regulations, other legislation covering governance and administration and the requirements of the Pensions Regulator (Clause 5).
- **Scheme Advisory Board** - responsibility for providing advice to the Responsible Authority and the Pension Board (Clause 7).

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### **Pension board - Clause 5(2)**

This clause requires that the Northern Ireland Local Government Officers Superannuation Committee must be appointed as the Pension Board for the LGPS.

We read this as having the effect that NILGOSC would act as both the Pension Board and also the Scheme Manager (it is assumed that there are no plans to change the existing role of NILGOSC as the body responsible for administering the scheme). Whilst such an arrangement is permissible in the equivalent GB Bill, it is not pre-determined in the way the Northern Ireland Bill is for local government only.

This reduces the distinct roles from four (which it would appear will exist for other public sector schemes) to three.

Whilst it could be seen as being administratively convenient to merge the roles of Scheme Manager and Pension Board into a single organisation, we would have concerns about this.

1. The roles of the two are very different and may require different resources, for example, investment skills in one role and audit skills in the other
2. A single committee constitution may not be able to effectively encompass the decision making requirement of the Scheme Manager role and the 'assistance' role (specified in the Bill) of the Pension Board
3. The cross scrutiny functions will prove difficult to apply and demonstrate within one committee with less than clear separation of functions, roles and responsibilities
4. The intention of the reforms in this regard was to improve scheme governance, not necessarily to continue with the status quo.

We are not convinced, for example, that splitting responsibilities within NILGOSC between Scheme Manager and Pension Board responsibilities would be capable of maintaining the standards and clarity of governance that should be expected.

We do though feel that it should be possible to maintain appropriate governance structures for NILGOSC in its role as Scheme Manager and have a separate entity acting as Pension Board without adding unduly to complexity or costs to the scheme.

For these reasons, on balance, we cannot support the content of Clause 5(2).

### **Scheme Advisory Board – Clause 7**

This would be a high level Board advising the Department of the Environment on, for example, regulatory changes to the scheme and also providing advice to Pension Boards.

We are conscious that in GB the Scheme Advisory Board will operate at scheme (rather than individual fund) level. The Bill suggests an Advisory Board for Northern Ireland that would simultaneously operate at both scheme and fund level (as there is only one LGPS fund in Northern Ireland). On the face of it this would appear excessive.

Given that there already exists (though currently only in 'shadow' form) a Scheme Advisory Board for the LGPS in GB, we feel this body could also act as the Board for the LGPS in Northern Ireland.

Our view is that this would give full access for the Department, the Minister and Pension Board to the highest level of expert advice as and when required, but as it would be operating across the range of LGPS schemes should represent a much lower cost.

In view of the above we would suggest that provision be made within clause 7 to appoint the Scheme Advisory Board established for schemes in England and Wales as the Board for Northern Ireland also.

Should you require any further information then please feel free to contact me.

Yours sincerely

John Adams  
Head of Workforce

## BMA response Pensions Bill — 30.08.2013

# Briefing note



bma.org.uk

Public Affairs

30 August 2013

### Public Service Pensions Bill

#### Written evidence to Committee for Finance and Personnel

The British Medical Association (BMA) is an independent trade union and voluntary professional association which represents doctors from all branches of medicine all over the UK. It has a total membership of over 150,000 in the UK and represents 70% of the medical profession here in Northern Ireland.

#### Executive summary

- The BMA has grave concerns about the Northern Ireland Executive's approach to public sector pension reform, and particularly the unfair way in which the NHS Pension Scheme is being treated. These concerns have been deepened by publication of the Public Service Pensions Bill in Northern Ireland. The legislation risks entrenching disparities across and within the different public sector schemes.
- Stronger amendments to the Bill are necessary to curtail new sweeping powers that would allow successive Executives to make unilateral and retrospective changes to accrued benefits in public sector pension schemes, utterly undermining the 'settlement for a generation' as promised by the UK Government.
- The NI Executive must give assurances that the arrangements for schemes will be robust and that the proposed arrangements will meet the requirements for effective governance of the NHS Pension Scheme with continued input from staff representatives.
- The Department of Finance and Personnel's control over valuations and over the employer cost cap must be tempered with requirements to consult more widely.
- The NI Executive should commit to adopting a fairer approach in the new Career Average Revalued Earnings (CARE) scheme system by ensuring that subsequent regulations prescribe a much flatter structure for the NHS scheme contribution.
- Amendments to the Bill are needed to allow the *Working Longer Review* to report before there is a final legislative change to tie the normal pension age to the state pension age.



## Introduction

1. The BMA has been deeply concerned about the UK Government and subsequently, the NI Executive's approach to public sector pension reform from the outset, and particularly the unfair way in which the NHS Pension Scheme is being treated.'
2. While we believe the aim of creating a common legislative framework for all public sector pensions is sensible<sup>6</sup>, this Bill actually goes much further. It also serves to highlight the disparities across and within the different schemes and to some extent, embed them for the future.'
3. The BMA accepts that the NHS Pension Scheme must offer a fair deal for taxpayers as well as to staff. Many NHS employees have already been subject to a three year pay freeze and dealing with the combined effects of major funding pressures and structural reforms. The BMA strongly believes that there is no justification for the scale of the planned changes to public sector pensions or the speed at which they are to be implemented.

## Inappropriate delegation of legislative powers

4. Clause 3 of the Bill grants the NI Executive wide and retrospective powers for further radical public sector pension changes adversely affecting public sector employees' pensions. This undermines the UK Government's claim that this round of pension reform would be a 'settlement for a generation'.<sup>7</sup> It is generally accepted that public sector pensions represent an element of deferred public sector pay.
5. During the legislative stages of the Westminster legislation, the UK Government recognised that there were strong concerns about the wide scope of powers. The UK Government acknowledged these and introduced what it believed to be better safeguards. The initial text of the Westminster Bill technically could have permitted unrestricted powers to amend primary legislation but the final Westminster Act now says such powers would be limited to only making 'consequential' changes or to achieve 'consistency'. There is also a 'consent lock' for any retrospective changes to pensions that have 'significant adverse effects on members'. This means members of pension schemes or their representatives would have to agree to such changes.'
6. Although the changes made to the Westminster legislation – now reflected in the NI legislation – signalled some positive movement, these are not enough as changes can still be made retrospectively and they may not necessarily be only consequential. Ideally, there should be further changes to the Bill to protect public sector pension promises and prevent costly future legal challenges.

## Scheme governance

7. The Bill specifies in Clauses 4 to 6 that each of the schemes must have a scheme manager and a pension board which must ensure compliance with the requirements of the Pensions Regulator for the first time.
8. The arrangements for schemes need to be robust and the NI Executive must provide assurances that the proposed arrangements will meet the requirements for effective governance of the NHS Pension Scheme with continued input from staff representatives.

### **DFP control over valuations**

9. Under Clause 11, scheme valuations will be conducted through direction from the Department of Finance & Personnel (DFP), with DFP determining the method, data and assumptions to be used and ultimately the contribution rate. Valuations may cover both the existing schemes and the new schemes established in the Bill.
10. The BMA believes that giving DFP wide powers to impose what data and assumptions are to be used in valuations and how a valuation is to be undertaken needs to be tempered with a requirement to consult wider than the Government Actuary.

### **DFP control over the employer cost cap**

11. According to Clause 12, the employer cost cap will be set in accordance with direction from DFP. The employer cost cap will be a rate used to measure the costs of a scheme. DFP will have powers to specify how the cap will operate in terms of specifying margins either side of the cap and the margin of adjustment required if costs exceed those margins. Regulations will determine the process if a cost adjustment is required and a default mechanism to ensure an adjustment is made.
12. We believe that regulations on the employer cost cap must be fully consulted on and subject to the affirmative procedure.

### **Career Average Revalued Earnings Scheme (CARE)**

13. The Bill gives powers to establish different types of schemes (including defined benefit and defined contribution schemes), with the exception of a final salary scheme which is specifically excluded. There will be a switch to a new CARE scheme for all NHS staff in 2015. For hospital doctors, this means the end of the final salary scheme, resulting in around a 30 per cent reduction in value on a like-for-like basis."
14. As part of reforms to the NHS Pension Scheme in 2008, health unions agreed to the introduction of a multi-tiered employee contribution structure. This was to reflect the fact that higher earners had previously received proportionately more benefit than lower earners from final salary arrangements for every £1 of employee contributions paid. The level of tiering is now set to increase dramatically by 2014-15, with higher earners within the NHS scheme paying significantly greater proportions of their salaries for their pensions than lower earners – even though the final salary link which benefited higher earners more has been broken.
15. For higher earning NHS staff, this unfairness is even more marked as the NHS scheme in general compares unfavourably to other public sector schemes for many staff. For example, many doctors will have to pay twice as much as a civil servant on a similar salary to receive a similar pension. The new tiering structure means that the cost of accruing pension benefits (even after income tax relief is taken into account) will vary for individual NHS staff members who join the NHS scheme after the CARE scheme is introduced.
16. The BMA accepts the general principle that the lowest paid staff should be encouraged by scheme design to join the pension scheme. It also accepts that tiering to recognise higher rate tax relief is appropriate within a CARE system. However, the steep tiering is completely unjustified in a CARE scheme.

17. The NI Executive must provide assurances that it will adopt a fairer and equitable approach in a new CARE scheme system by ensuring that subsequent regulations prescribe a much flatter structure for the NHS scheme contribution.

### Linking state and normal pension ages

18. The Bill links normal pension age for public sector pensions to state pension age, which is rising to 68 by 2046. This applies to all public sector workers except for firefighters, police and the armed forces, where the normal pension age will remain 60. The *Working Longer Review* of the planned increase in the normal pension age for staff in the NHS Pension Scheme to 68, is currently being undertaken jointly by the UK Government, employers and health unions.
19. The *Review* should be allowed to make genuinely evidence-based recommendations as to whether all or some frontline NHS staff have roles that are particularly physically, mentally and/or emotionally demanding and so should have their normal pension age capped at a lower age.
20. The review was a key component of the scheme specific discussions between the UK Government and trade unions which appears to have been ignored by this clause. Furthermore, in the final report of the Independent Public Service Pensions Commission, recommendation 11 states that ‘...*The link between the State Pension Age and Normal Pension Age should be regularly reviewed, to make sure it is still appropriate...*’ As written, the Bill does not currently allow for this.
21. The Bill should be amended to allow the *Review* to report before there is a final legislative change to tie the normal pension age to the state pension age.

### For further information please contact:

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 NI Deputy Secretary  
 British Medical Association Northern Ireland  
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 Tel: 028 9026 9660 Fax: 028 9026 9665  
 Email: ngould@bma.org.uk

### References

HM Treasury, 13 September 2012. Available at: [http://www.hm-treasury.gov.uk/press\\_81\\_12.htm](http://www.hm-treasury.gov.uk/press_81_12.htm)

The BMA has always accepted that the NHS Pension Scheme must offer a fair deal to taxpayers as well as to NHS staff but the BMA believes there is no justification for the scale of the planned changes or the speed at which they are to be implemented. In 2008, NHS staff agreed to major changes to the NHS scheme to make it sustainable in the long term. This involved a large increase in employee contributions and the introduction of tiered contributions to protect lower paid workers. It also meant an increase in the pension age for new entrants (to 65). The BMA engaged very constructively with the UK Government and employers to reach agreement on these reforms, which for many senior doctors resulted in a 42% increase to pension contributions. Costs to taxpayers were reduced and controlled, with mechanisms in place to make the NHS Pension Scheme sustainable for the future, including agreement that any unforeseen increase in costs due to improved longevity would be met by members. The terms agreed for the NHS Pension Scheme were envisaged by all parties as a long-term deal, and not one that would be abandoned by the UK Government just four years later.

The Bill provides a common legislative framework for all public sector pension schemes following recommendation from Lord Hutton in the final report of the Independent Public Service Pensions Commission. Several public sector schemes are captured within the Bill, including the NHS Pension Scheme. Independent Public Service Pensions Commission: Final Report, 10 March 2011. Available at: [http://cdn.hm-treasury.gov.uk/hutton\\_final\\_100311.pdf](http://cdn.hm-treasury.gov.uk/hutton_final_100311.pdf)

<sup>1</sup> BMA (2012) Public sector pension reform: challenging unfairness. Available at: <http://www.bma.org.uk/working-for-change/negotiating-for-the-profession/pensions-unfairness>

<sup>2</sup> HM Treasury, 13 September 2012. Available at: [http://www.hm-treasury.gov.uk/press\\_81\\_12.htm](http://www.hm-treasury.gov.uk/press_81_12.htm)

<sup>3</sup> See section 3 and section 23 of the Public Service Pensions Act 2013. Available at:

[http://www.legislation.gov.uk/ukpga/2013/25/pdfs/ukpga\\_20130025\\_en.pdf](http://www.legislation.gov.uk/ukpga/2013/25/pdfs/ukpga_20130025_en.pdf)

<sup>4</sup> GPs already have a CARF scheme but they will also see their contributions rise very significantly and will have to work to 68.

## Education Committee letter dated 20 Sept 2013

Committee for Education  
Room 375  
Parliament Buildings  
Tel: +44 (0)28 9052 21821  
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**To:** Shane McAteer  
Clerk to the Committee for Finance and Personnel

**From:** Peter McCallion  
Clerk to the Committee for Education

**Date:** 20 September 2013

**Subject:** Public Service Pensions Bill

Shane,

At its meeting on Wednesday 18 September 2013, the Committee received a briefing from the Department of Education on the Public Service Pensions Bill.

The Committee agreed to seek further written evidence from the Department.

It is anticipated that the submission from Committee for Education on the Bill to the Committee for Finance and Personnel will be agreed at its meeting on 9 October 2013 and forwarded to you shortly after this.

Regards

**Peter McCallion**  
**Committee Clerk**

# FDA letter to Pensions consultation

Grace Nesbit  
Corporate HR  
Royston House 34  
Upper Queen Street  
Belfast  
BT1 6FD

## NI Pensions Bill

FDA wishes to raise serious concerns about the above proposed Bill and associated consultation.

FDA members agreed a set of changes to the GB Principal Civil Service Pension Scheme and now expect the government to implement those changes. The proposed NI draft Bill will prevent this happening and furthermore introduces new provisions that were never discussed with GB officials and are contrary to the spirit and actuality of the discussions held.

To be clear, if the draft NI Bill does not reflect the agreement to which our members signed up to, that agreement will be broken.

The areas of greatest concern are as follows:

### **Valuation process and governance**

The Bill effectively takes away from the DFP Minister and established (or new) governance arrangements the ability to manage the valuation process of the scheme. The agreement we reached for the Civil Service scheme stipulated that it would be the Minister, in conjunction with the governance group, Treasury and GAD who would determine the assumptions for the valuation. The Bill does not allow that part of the agreement to be honoured.

### **Negative revaluation**

The existing CARE schemes do not provide for negative revaluation, if and when CPI (the current index) is negative, the figure used is zero. This is what members expect to apply from 2015 but the Bill currently allows for a negative revaluation to take place. This would not only be a major communications problem if members are not to opt out in such circumstances but most fundamentally it is not part of the agreement.

### **Consultation and consent**

At no point in the GB negotiations were we informed that the consultation provisions in the Bill and therefore in the new scheme would be weaker than is currently the case. In fact all the statements from the Chief Secretary give the distinct impression that the hurdles to future radical reform will be higher. Since the reform of the CSCS, the requirements in this regard have already been changed for the PCSPS so you will appreciate we did not expect this Bill to impose further, undiscussed changes.

We also have significant concerns about the apparent delay in the introduction of the expanded Fair Deal provisions which was central to our agreement and the lack of an independent review of the automatic link between normal and state pension ages which was a core recommendation of Lord Hutton in his report.

The attached Annex outlines additional concerns. We seek an urgent commitment from you that the proposed NI Bill will be sufficiently amended in order to enable the agreed reforms to take place.

Yours sincerely,

CH Baird  
FDA Convenor

NIS

# PSPB Screening Document



Equality House  
7-9 Shaftesbury Square  
Belfast BT2 7DP

[www.equalityni.org](http://www.equalityni.org)

26 September 2013

Shane McAteer  
Committee Clerk  
Committee for Finance and Personnel  
Room 419 Parliament Buildings  
Stormont  
Belfast  
BT4 3XX

Dear Mr. McAteer

## **Re: Public Service Pensions Bill Equality Screening**

The Commission notes that the Department of Finance and Personnel (DFP) has screened the Public Service Pensions Bill and in doing so it has used the screening template recommended by the Equality Commission as set out in Appendix 1 of the Revised Guide for Public Authorities (2010). The Commission also notes that DFP has used the recommended screening questions and has decided not to conduct an Equality Impact Assessment (EQIA). The Commission is content that the screening exercise has followed its guidance.

The screening document clearly states that the policy reflects a binding decision by the Executive to approach pension reform consistently in line with equivalent schemes in Great Britain and not to adopt different approaches in Northern Ireland. The screening report sets out the policy context in that the Public Service Pensions Bill gives legislative effect to principles to reform devolved public service pension schemes in Northern Ireland. It is clear that the career average revalued earnings (CARE) scheme model recommended by the Independent Public Service Pensions Commission links normal pension ages to state pension ages. This manages longevity risks and reflects progressive equalization in state pension ages for the population in general.

The Commission notes that failure of the Northern Ireland Executive to implement the changes will mean a reduction of an estimate £262 million



Chief Commissioner: Dr. Michael Wardlow

Chief Executive: Evelyn Collins CBE

per annum in the block grant to Northern Ireland. The Commission is concerned that this reduction could exacerbate some existing inequalities if departmental budgets are reduced as a result of changes to the block grant.

The screening report states that the Public Service Pensions Bill will have more impact on men who have traditionally experienced higher levels of job progression as opposed to those with flatter career structures. The Commission notes that there is some mitigation, in that there is a transitory arrangement which will apply to staff who are within 10 years of normal retirement age. The Commission welcomes this. It is also clear that through the work of the Department of Finance and Personnel Committee, stakeholders, including trade unions, have had an opportunity to make their views known.

The Commission welcomes the commitment to carry out further analytical work as the policy is implemented.

I hope that you find these comments helpful.

Yours sincerely

**Eileen Lavery**  
**Head of Advice and Compliance**

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## Committee for Social Development response 27.09.2013

**Committee for Social Development**

Room 410,  
Parliament Buildings,  
Stormont,  
Belfast  
BT4 3XX  
Tel: 028 9052 1864

**To:** Shane McAteer, Clerk to the Committee for Finance and Personnel

**From:** Kevin Pelan, Clerk to the Committee for Social Development

**Date:** 27 September 2013

**Subject:** Public Service Pension Bill

At its meeting on 19 September 2013, the Committee for Social Development considered written submissions from stakeholders regarding the call for evidence on the Public Service Pension Bill.

Subsequently, at its meeting on 26 September, the Committee agreed not to make a response to the call for evidence.

**Dr Kevin Pelan**

**Ext 21864**

# NASUWT briefing paper for evidence session on the 9 October



## **NASUWT Evidence for the Northern Ireland Assembly Committee for Finance and Personnel – 9<sup>th</sup> October 2013**

### **WITHOUT PREJUDICE**

The NASUWT is committed to working with the Northern Ireland Assembly to secure the best interests of teachers and pupils in all schools in Northern Ireland. The NASUWT is the largest union representing teachers and principals in Northern Ireland.

The NASUWT opposes the Public Service Pensions Bill. The proposed reforms to public service pensions are unjustified and unnecessary.

If the Public Service Pensions Bill becomes law, it will:

- worsen the pensions of all public service workers, who form a bigger proportion of society in Northern Ireland than elsewhere in the UK;
- force teachers to work much longer to receive an adequate pension;
- devastate the morale of the teaching profession;
- exacerbate the growing scandal of newly qualified teacher unemployment in Northern Ireland;
- potentially discriminate against teachers, particularly women and younger teachers;
- damage the Northern Ireland economy by reducing public service workers' spending power because of increased pension contributions;
- damage the Northern Ireland economy by reducing public service pensioners' incomes.

The NASUWT is committed to working constructively with the Northern Ireland Assembly to secure the best pension arrangements, which will continue to secure the future recruitment and retention of a high quality teacher workforce for the benefit of all pupils. The NASUWT is deeply concerned that quality education provision for pupils will be undermined as a

result of measures contained in the Public Service Pensions Bill, which have been transposed from the legislative measures adopted by the Westminster Government.

The NASUWT notes with concern the constraints imposed on the Northern Ireland Assembly in respect of the determination of its public service pensions policy, including the threat to reduce the Northern Ireland Block Grant.

### **Suggested Amendments to the Public Service Pensions Bill**

The NASUWT invites the Committee for Finance and Personnel to consider the scope for amendments to the Public Service Pensions Bill which will deliver fairness for teachers. Many of the amendments suggested below would have no financial cost implications for the Northern Ireland Assembly. However, if the amendments are successful, they will increase the pension protections which teachers and other public service workers receive and will bring some democratic accountability to the process of public service pension governance.

The NASUWT recognises that the wording of amendments suggested below may need to alter to reflect the Assembly's legislative process. The NASUWT would be pleased to work with the Committee for Finance and Personnel on the wording of any legislative measures.

The Committee for Finance and Personnel should note also that the NASUWT supports the amendments to the Bill as proposed by the Irish Congress of Trade Unions (ICTU).

In addition, the NASUWT suggests the following **deletions** of clauses and sub-clauses, which will mitigate some of the most detrimental aspects of the Bill on teachers' pensions.

#### **8.2 (b and c)**

This deletion would ensure that public service schemes remain as defined benefit schemes, where teachers and other public service workers are able to reasonably predict the pension benefits they would receive, and can plan for their futures.

**8 (5)**

This deletion would ensure that regulations made by the Department of Finance and Personnel (DFP) cannot be negative resolutions and the Assembly has to vote on these.

**9 (5) (a)** Deletion of second clause 'if... and', together with deletion of **9 (5) (b)**.

This deletion would ensure that the Assembly's affirmative procedure has to be used in respect of all revaluation orders of scheme members' benefits under the CARE process - i.e. detrimental changes to revaluations cannot be made without an Assembly vote.

**9 (6)** Deletion of 'which does not exceed 5 years'.

This refers to the feature of public service pension schemes whereby any member who is deferred for more than five years has their benefits revalued in line with CPI rather than CPI + 1.6%. This provision is likely to impact detrimentally and disproportionately on women teachers who tend to take lengthier career breaks for family reasons. The deletion of this clause will therefore remove a potential inequality.

**10 (1)** Deletion of **(a)**, together with the clause 'if that is higher' in **(b)**.

Deletion of **10 (3), (4) and (5)**.

These would retain the normal pension age of 60 for the uniformed services, but ensure a pension age of 65 for Northern Ireland Teachers' Pension Scheme members, which is now the case for post-2007 entrants. The teachers' pension age would not increase further in line with the increase in the state pension age, but would remain at 65.

Deletion of all wording after 'procedure' in **24(1)**.

This would ensure that all scheme regulations are subject to an Assembly vote, provide greater transparency and assurance to members of public service pension schemes that future changes are subject to appropriate democratic debate and scrutiny.

### **Protecting Public Service Workers' Pensions after 2015**

The Bill's proposals for public service scheme governance place public service workers' pensions at further risk after 2015. The Bill establishes two boards for each scheme:

- the Pension Board, and
- the Scheme Advisory Board.

These boards will supposedly exist to manage and administer the public service schemes and consider future changes to pension benefits following valuations. However, as defined in the Bill, the boards are not fit for purpose, do not provide adequate protections to safeguard the future of the pension schemes and would marginalise the views of scheme members (employees). The NASUWT suggests amendments to the Bill to provide these protections.

The purposes of the NASUWT's suggested amendments are as follows:

Clause **5 (5) (c)** establishes that the Pension Board must include employer representatives and member representatives in equal numbers. The NASUWT suggests amending this clause and the rationale for this amendment is that the DfE's current proposal for England and Wales is that only two out of twelve representatives of the Pension Board of the Teachers' Pension Scheme will be direct teacher union nominees. The remainder are likely to be the Secretary of State's nominees, although this has currently not yet been finally determined. The England and Wales Teachers' Pension Scheme Pension Board is therefore not fit for purpose as a trustee board. The NASUWT would invite the Northern Ireland Assembly to bring about an amendment to prevent this happening in Northern Ireland.

The NASUWT would wish for the Northern Ireland Assembly to bring about an amendment [additional 5 (5) (d)] to ensure that, in the case of the Teachers' Pension Scheme, scheme member representatives are nominated by the Teacher Side of the Scheme Advisory Board (this is consequential on the amendment to Clause 7 being accepted), to read as follows:

*'Member representatives are nominated by the Teacher Side of the Scheme Advisory Board.'*

As an alternative, if the NASUWT's suggested amendment to **Clause 7** is not accepted, the amendment to **Clause 5** should then read:

*'Member representatives are representatives of the teacher unions.'*

The NASUWT also suggests an amendment to **Clause 7**, to establish the scheme advisory board as a negotiating board, with a wider remit than that currently in the Bill. The amendment would include the following provisions, which the NASUWT would wish to see as key features in the scheme advisory boards. This amendment is applicable to every Northern Ireland public service pension scheme, including the Teachers' Pension Scheme:

- *The Scheme Advisory Board will be a joint body. The joint body will be made up of a Union Side, comprising appropriate representatives of the scheme unions, and an Employer Side, comprising appropriate representatives of the Government Department and employers.*
- *The Scheme Advisory Board will be responsible for negotiations on scheme benefits and contributions, membership regulations, conduct of valuations and application of cost sharing and cost cap arrangements, as well as matters relating to effective administration and management.*
- *Both Sides will negotiate with a view to reaching agreement on any and all of the matters for which the joint body's terms of reference make it responsible.*

- *Both Sides will have equal weight of representation and will have a Chair, Vice Chair and Secretary.*
- *The Union Side will be made up only of the unions which represent members of the relevant public service pension scheme.*
- *The Union Side will determine its own constitution and arrangements for decision making and representation at meetings independently.*
- *A 'conflict of interest' as defined in the Act will not arise as a result of any member of the body exercising their representative role.*
- *Meetings of the Scheme Advisory Board may be chaired by any member of the body, by agreement of those present.*

### **Further information – the specific impact on teachers' pensions of Northern Ireland TPS Reform**

The Northern Ireland Public Service Pensions Bill mirrors entirely the British Government's Public Service Pensions Act. Because of this, it is possible to use the England and Wales Teachers' Pension Scheme (TPS) *Scheme Reform Pensions Calculator* to model the impact on Northern Ireland teachers with different career histories of pensions reform. The following calculations assume that the design of the Reformed Northern Ireland TPS is eventually identical to the England and Wales TPS and are therefore an indication of potential impact only.

The blue row shows the pension benefits which teachers receive under the current TPS, for teachers with a current normal pension age (npa) of 60 or 65. The green row shows what teachers would receive under the reformed TPS if they retire at the same age, taking actuarially reduced benefits. The red rows show the additional years which teachers will have to work to receive their unreduced pensions, and then the severely reduced lump sums which teachers will receive, even when working another seven years. Of course, all

teachers will have to pay up to 50% more in pension contributions in comparison with April 2012 for these inferior benefits.

### Comparison of existing and future benefits

| Current salary point                    | M2      | M6                   | UPS3                   | UPS3 +TLR              | Primary Head (L23)      |
|-----------------------------------------|---------|----------------------|------------------------|------------------------|-------------------------|
| Age                                     | 23      | 28                   | 40                     | 40                     | 45                      |
|                                         |         |                      |                        |                        |                         |
| Current npa                             | 65      | 65                   | 60                     | 60                     | 60                      |
|                                         |         |                      |                        |                        |                         |
| Salary point at npa                     | UPS3    | UPS3 +<br>£1847 TA1  | UPS3                   | UPS3 +<br>£6407 TA3    | L28                     |
|                                         |         |                      |                        |                        |                         |
| Final salary                            | £36,756 | £38603               | £36,756                | £43163                 | £72,752                 |
| Years' service                          | 43      | 43                   | 38                     | 38                     | 38                      |
| Current pension (and lump sum) at 60/65 | £26,342 | £18884 +<br>(£27665) | £17,459 +<br>(£52,377) | £20,502 +<br>(£61,507) | £34,557 +<br>(£103,672) |
|                                         |         |                      |                        |                        |                         |
|                                         |         |                      |                        |                        |                         |
|                                         |         |                      |                        |                        |                         |
| New npa                                 | 68      | 68                   | 67                     | 67                     | 67                      |
|                                         |         |                      |                        |                        |                         |
| Extra years worked                      | 3       | 3                    | 7                      | 7                      | 7                       |
|                                         |         |                      |                        |                        |                         |
| Pension (and lump sum) at new npa       | £22,100 | £26,500              | £24,100 +<br>(£27,600) | £28,300 +<br>(£32,400) | £45,500 +<br>(£68,200)  |

The NASUWT is happy to attend further meetings of the Committee for Finance and Personnel, to discuss these suggested amendments and deletions, together with any other aspect of the Public Service Pensions Bill. Please contact Dave Wilkinson, NASUWT National Negotiating Official, on 0121 453 6150 or [dave.wilkinson@mail.nasuwt.org.uk](mailto:dave.wilkinson@mail.nasuwt.org.uk) if you wish to do so.





Northern Ireland  
Assembly

Committee for the Environment  
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**From:** Sheila Mawhinney  
Clerk to the Committee for the Environment

**Date:** 7 October 2013

**To:** Shane McAteer  
Clerk to the Committee for Finance and Personnel

**Subject:** The Local Government Pension Scheme

1. The Local Government Pension Scheme is administered by the Department for the Environment under the Superannuation (Northern Ireland) Order 1972, and so this Committee sought the views of the relevant stakeholders of this Scheme. Responses were received from NILGA, NILGOSC, ILEX and Fermanagh District Council. The submissions made the following clause-specific comments:

- **Clauses 3(5),9(2),11(2),12(3),14(2)(b) - Role of DFP**

NILGOSC is concerned that DFP will make decisions that will be sensible for the unfunded schemes but could cause financial problems for the funded LGPS scheme. NILGOSC urges DFP to consult with it and other relevant stakeholders in advance of making directions on any matter affecting the LGPS, and to consider making separate directions for the LGPS as distinct from the other Public Service pension schemes.

- **Clauses 5,6,11,14,15 - Revised Governance Arrangements**

The proposed changes to the governance arrangements are less problematic for NILGOSC, however it has a concern regarding the new responsibility of DFP to issue directions regarding some of the proposed changes.

- **Clause 5(2) Pension board**

NILGA is not convinced that splitting responsibilities within NILGOSC between Scheme Manager and Pension Board responsibilities would be capable of maintaining the standards and clarity of governance that should be expected and NILGA does not support this clause.

However, NILGA feel that it should be possible to maintain appropriate governance structures for NILGOSC in its role as Scheme Manager and

have a separate entity acting as Pension Board without adding unduly to complexity or costs to the scheme.

- **Clause 7 - Scheme Advisory Board**

The Bill suggests an Advisory Board for Northern Ireland that would simultaneously operate at both scheme and fund level (as there is only one LGPS fund in Northern Ireland). NILGA states that, on the face of it, this would appear excessive. NILGA suggests that provision be made within clause 7 to appoint the Scheme Advisory Board established for schemes in England and Wales as the Board for Northern Ireland also.

- **Clause 17 Oversight of the Pensions Regulator**

NILGOSC believes that the extension of the Pensions Regulator's powers to cover the LGPS seems redundant, and an unnecessary cost for the Scheme to bear.

- **Clause 18 (4)(a) - New Local Government Pension Scheme from 1 April 2014**

The implementation of the new scheme by 1 April 2014 will be a challenge. If the regulations from DOE are not ready until October 2013, NILGOSC will then have only 5 months to prepare itself, its membership and employers for the changes due from 1 April 2014.

2. The Committee also arranged a briefing from Departmental officials on 12 September 2013 and raised a number of these issues. In addition, the Department made a written response on 1 October 2013.
3. I have attached the written submissions received, the Departmental briefing paper provided in advance of the Committee meeting on 12 September 2013 and the Department's written response to queries arising from that meeting.

**Sheila Mawhinney**

**Clerk to the Environment Committee**



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Your reference:  
Our reference: CQ/160/13

Date: 01 October 2013

Dear Sheila

## **PUBLIC SERVICE PENSIONS BILL**

Environment Committee asked for the Department's comments on the submissions it had received to the Department for comment.

The Department's comments are set out in the attached paper.

I trust this information is of assistance, should you require anything further please contact me directly.

Yours sincerely

**Helen Richmond**  
DALO  
[by e-mail]



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**Environment**  
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## **DEPARTMENTAL RESPONSE TO SUBMISSIONS RECEIVED BY THE ENVIRONMENT COMMITTEE ON THE PUBLIC SERVICE PENSIONS BILL**

1. The Environment Committee received submissions from the Northern Ireland Local Government Association (NILGA), the Northern Ireland Local Government Officers' Superannuation Committee (NILGOSC), Fermanagh District Council and ILEX (the urban regeneration company for Derry-Londonderry).
2. The comments from NILGOSC and NILGA were made in relation to the Public Service Pensions Bill. Fermanagh District Council and ILEX commented on scheme specific issues on local government pensions.
3. Comments were made on the following areas of the Public Services Pensions Bill.
  - Establishment of new schemes
  - Governance
  - Scheme Advisory Board
  - Design
  - Cost Control
  - Administration
  - Regulatory Oversight
  - Transitional Arrangements

### **Establishment of new schemes**

4. Clause 3 provides for the making of pension scheme regulations. Clause 3(5) provides that such scheme regulations will require the consent of the Department of Finance and Personnel. NILGOSC expressed concerns that

this, and other clauses, represented a shift to a more central control by the Department of Finance and Personnel (DFP).

### ***Departmental response***

**The Department considers that the requirement that DFP approves Local Government Pension Scheme (Northern Ireland) regulations is unnecessary as it is a funded scheme.**

### **Governance**

5. Clause 5 requires that a scheme manager establishes a pension board to assist it in securing effective and efficient governance of the pension scheme. NILGA raised concerns about clause 5(2) which requires that NILGOSC must be appointed as the pension board for the Local Government Pension Scheme (LGPS).

Among the points raised by NILGA were:

- the roles of the scheme manager and pension board are very different and may require different resources (e.g. investment skills in one role and audit skills in the other);
- a single committee constitution may not be able to effectively encompass the decision making requirement of the scheme manager role and the 'assistance' role (specified in the Bill) of the pension board; and
- the cross scrutiny functions will prove difficult to apply and demonstrate within one committee with less than clear separation of functions, roles and responsibilities.

NILGA noted that the intention of the reforms was to improve scheme governance, not necessarily to continue the status quo and suggested that it should be possible to have a separate pension board without adding unduly to complexity or costs of the Scheme.

***Departmental response***

**The Department has asked DFP to consider an amendment to this clause to give the Minister of the Environment greater flexibility in deciding the arrangements for the pension board for the LGPS.**

**Scheme advisory board**

6. Clause 7 requires a scheme advisory board to be established in each scheme to advise on desirability of any changes. NILGA considers that the requirement for a scheme advisory board that would simultaneously operate at both scheme and fund level is excessive because the LGPS in Northern Ireland has one fund. The equivalent scheme in England and Wales has over eighty funds. NILGA suggests that clause 7 should be amended to enable the scheme advisory board for the LGPS in England and Wales to also act as the scheme advisory board for the LGPS in Northern Ireland. NILGA considers that this would give the Minister, the Department of the Environment and the LGPS pension board, full access to the highest level of expert advice, as and when required, at a much lower cost.

***Departmental response***

**On the face of it NILGA's suggestion that scheme advisory board for the LGPS in England and Wales acts as the scheme advisory board for Northern Ireland appears to have some advantages such as shared expertise and lower cost. There are, however, potential disadvantages. In particular there is a risk that the scheme advisory board would make recommendations, based on the experience of the LGPS in England and Wales, which are unsuitable for the Northern Ireland scheme. In addition, issues specific to the LGPS in Northern Ireland would not be a priority for a joint board.**

**Clause 7 enables the Minister of the Environment to specify the arrangements for the scheme advisory board in the scheme regulations. There will be a consultation on the regulations which will enable scheme**

**members, employers, trade unions and other interested parties to put forward their views on the arrangements for a scheme advisory board.**

### **Design**

7. Clause 9 provides for the revaluation of pensionable earnings by reference to a change in prices or earnings (or both). Clause 9(2) provides that the change to be applied is to be such percentage increase or decrease, as an order made by DFP may specify.

### ***Departmental response***

**The Department has previously consulted on draft regulations which provide for revaluation in accordance with the consumer prices index. Subordinate legislation which gives effect to a reformed Local Government Pension Scheme (Northern Ireland) (“LGPS (NI) 2014”) will be made under existing powers in the Superannuation Order (Northern Ireland) 1972. The order made by DFP will specify the percentage change to be applied each year.**

### **Cost Control**

8. Clause 11 provides for actuarial valuations of the scheme. Clause 11(2) provides such a valuation is to be carried out in accordance with directions by DFP. Clause 12 provides that scheme regulations must set an employer cost cap, expressed as a percentage of pensionable earnings of scheme members, to be used for measuring changes in the cost of the scheme. Clause 12(3) provides that such employer cost cap is to be set in accordance with DFP directions. NILGOSC has concerns that DFP directions may not take into account the different nature and requirements of a funded scheme. A

### ***Departmental response***

**The Department acknowledges the concerns of NILGOSC. Ultimately DFP will be responsible for this matter but the Department will make**

**every effort to ensure that the directions are compatible with a funded scheme.**

### **Administration**

9. Clause 14 provides that the scheme manager must provide a benefit information statement to each person in pensionable service, at least once yearly. Clause 14(2) provides that the statement must include a description of the benefits earned by the person, and such other information as DFP directions specify. Clause 15 provides for the collection and publication of information about schemes and allows DFP to direct schemes to publish, or provide to it, information about schemes. Clause 15 also provides for specifying how and when that information is to be published or produced. NILGOSC expressed concern that DFP directions that might alter significantly the existing working arrangements.

### ***Departmental Response***

**The Local Government Pension Scheme regulations have included a requirement to issue an annual benefit statement since April 2006. There is a lot of information currently available about the LGPS. NILGOSC publishes an annual report which gives information on the scheme and contains a copy of its accounts. The triennial valuation report is also published.**

**The Department will liaise with colleagues DFP to minimise the additional burden to the administrator.**

### **Regulatory oversight**

10. Clause 17 makes provision about the regulatory responsibility of the Pensions Regulator, in relation to the governance and administration of public service pension schemes. It allows for an order to make different provision for different purposes, enabling the correct level of regulatory oversight to be applied in each individual circumstance, if required.



***Departmental response***

**The Department recognises that this is an area of concern for NILGOSC but it is not possible to assess the impact of this until the Pensions Regulator publishes the draft codes of practice.**

**Transitional arrangements –**

11. Clause 18 (4) provides that no benefits can accrue under the existing local government pension scheme after 31 March 2014. NILGOSC has suggested that the timetable for implementation of the new scheme will be challenging.

***Departmental response***

**The Department is committed to having the subordinate legislation in place for the reformed local government pension scheme to come into operation from April 2014. A consultation has been carried out on the scheme design proposals and draft regulations. A further consultation will held on the proposals before the end of the year.**

**General Comments**

12. Other comments from NILGOSC, Fermanagh District Council and ILEX. These comments are specific to the LGPS rather than the Public Services Pension Bill.

***Departmental response***

**The Department is currently finalising its response to its consultation on the future scheme design proposals for the Local Government Pension Scheme (Northern Ireland). The comments from NILGOSC, Fermanagh District Council and ILEX will be addressed in that response.**



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Your reference:

Our reference:

Date:

Dear Sheila

You asked for information about the relationship between the Public Service Pensions Bill and the Local Government Pension Scheme (LGPS).

The Department of the Environment is responsible for the policy and legislation for one public sector pension scheme, the LGPS. The LGPS has 44,465 active members (i.e. members who pay pension contributions); 22,417 deferred members and 28,500 pensioners. A total of 204 employers participate in the pension scheme.

It is intended that the Public Service Pensions Bill will supersede the current primary legislation for public sector pensions, the Superannuation (Northern Ireland) Order 1972. The Bill draws together similar powers to those in the Superannuation Order about the scope of scheme regulations and establishes a common framework of requirements for future pension scheme regulations. A brief summary of the Bill and its effect on the LGPS is attached at Annex A.

Marie Cochrane and Patrick Smith (Local Government Policy Division) will attend the Committee meeting on 12 September to provide further briefing on this topic.

I trust this information is of assistance, should you require anything further please contact me directly.

Yours sincerely,

Helen Richmond  
DALO  
[by e-mail]

## **PUBLIC SERVICE PENSIONS BILL**

### **Responsible Authority**

The Public Service Pensions Bill (clause 2 and Schedule 2) specifies the Department as the responsible authority for the pension scheme for local government workers. The Bill will change the consent regime for the Local GPS regulations from it being solely the responsibility of the Minister of the Environment to one where the prior agreement of the Department of Finance and Personnel is required.

### **Governance (clauses 4 to 7)**

Scheme regulations have to provide for a scheme manager to manage or administer the scheme; a pension board and a scheme advisory board. As the LGPS regulations already specify that the Northern Ireland Local Government Officers' Superannuation Committee (NILGOSC) is the administering authority, no further changes are required to fulfil clause 4.

Clause 5(2) permits NILGOSC to be the pension board for the LGPS. NILGOSC meets the requirements of clause 5 as it already has an equal number of employee and employer representatives together with an independent chairman and two independent members. Officials will consider the final proposals for pension boards in the Local Government Pension Scheme in England & Wales to see if there are any elements that would improve the governance arrangements in Northern Ireland.

The Department has not yet considered the issue of a scheme advisory board in any detail but it may be that an arrangement similar to that for the Local Government Pension Scheme Review Group (the Review Group) could prove suitable. The Review Group considers and advises the Minister on possible changes to the LGPS. It comprises 4 employer and 4 trade union representatives plus two representatives from NILGOSC and is chaired by a senior official from the Department. Again officials will be considering the arrangements to be introduced in the Local Government Pension Scheme in England & Wales to see if there are examples of good practice that should be adopted.

## Public Service Pensions Bill

**Scheme Design (clauses 8 to 10)**

The Bill will change the future pension arrangements for public service employees from a final salary basis to career average revalued earnings. As Committee Members will be aware, the Department consulted (11 April to 6 June 2013) on a proposed scheme design for the LGPS from 1 April 2014. The proposed scheme design included:

- a career average revalued earnings pension;
- an accrual rate of 1/49th;
- revaluation in accordance with the Consumer Price Index (CPI); and
- the normal pension age to be 65 or the individual's State Pension Age, whichever is the higher.

**Cost Control (clauses 11 to 13)**

Clause 11 requires that the schemes are valued in accordance with directions from the Department of Finance and Personnel. This clause will apply to the LGPS for the purposes of setting the employer cost cap (required by clause 12) and determining subsequent changes to the employer cost cap. This will apply to future pension cost only.

Clause 13 provides for the normal triennial fund valuation that sets the contribution rate paid by employers in the LGPS. The triennial valuation is carried out by an actuary appointed by the scheme administrator (or scheme manager) NILGSOC. The Bill will introduce an independent scrutiny of the valuation. At the moment officials would consider the valuation report and raise any areas of concern with NILGOSC. The Bill will require (clause 13(5)-(7)) the Department to appoint a qualified person to check that the valuation has been carried out properly. If that is not the case the report may recommend remedial actions and the Department may direct the scheme manager to take remedial steps.

**Administration (clauses 14-17)**

Clause 14 requires all scheme regulations to provide benefit information to members. The LGPS regulations have included a requirement to issue an annual benefit statement since April 2006.

Clause 15 makes provision for the Department of Finance and Personnel (DFP) to make directions requiring information about the schemes to be published or provided to DFP. It is

not expected that compliance with this clause will require much additional work by the Department or NILGOSC. NILGOSC already publishes an annual report which gives information on the scheme and contains a copy of its accounts. NILGOSC also publishes the triennial valuation report on its website.

Clause 17 and Schedule 4 give the Pensions Regulator greater oversight of public service pensions. It is not possible to assess the impact of this until the Pensions Regulator publishes the draft codes of practice.

### **Other Provisions**

Clause 18 closes accrual of benefits under the current LGPS regulations from 31 March 2014. It permits the new scheme regulations to make an exception for members before 1 April 2012. This enables scheme regulations to give effect to the Coalition Government's commitment that members within 10 years of the normal retirement age for that scheme on 1 April 2012 would not see any reduction in their pension benefits. The LGPS proposes to implement this in the new regulations by providing an 'underpin' for members within 10 years of the normal retirement age (65 years of age) on the 1 April 2012. The underpin means that those members who would see a change in their pension age in that period will get a pension at least equal to that which they would have received in the current scheme.

Clause 20 makes provision to give effect to another aspect of the Coalition Government's commitment, which is that benefits accrued in the current schemes will be linked to the final salary at retirement rather than the salary at the date of transfer to the new arrangements.

Clauses 21 to 24 set out the procedure for scheme regulations. As is currently the case, the Department will be required to consult before making changes to the regulations but the requirement to publish a statement on the persons who would normally be consulted is new.

Additional consultation requirements and reporting will apply where a change is proposed to the protected elements (accrual rate, members' contribution rate and the extent to which the scheme is a career average scheme) until 31 March 2040 unless the change is required as a result of the cost control mechanism.

## Public Service Pensions Bill

Clauses 23 and 24 require regulations which will apply retrospectively and have a significant adverse impact on members to be subject to the affirmative resolution procedure.

Clause 25 enables pension scheme regulations to continue to extend to people other than the main category of workers. For example, the LGPS regulations stipulate the types of bodies that can be considered for admission to the scheme.

Clause 28 provides that LGPS regulations made under the existing enabling power, Article 9 of the Superannuation (Northern Ireland) Order 1972, for benefits from 1 April 2014, have affect to the extent that could have been made under the Bill.

Clause 32 allows an existing public service scheme to amend the normal and deferred retirement age for members to 65 years or the same age as the individual's State Pension Age, whichever is the higher, before the clause has been brought into force.

Dear Mrs Mawhinney

Thank you for inviting NILGOSC to make a submission to the Environment Committee regarding the Public Service Pensions Bill 2013.

### **Background**

The Northern Ireland Local Government Officers' Superannuation Committee (NILGOSC) is the Non-Departmental Public Body responsible for the administration of the Local Government Pension Scheme (LGPS) in Northern Ireland.

NILGOSC serves 205 public sector employers including the 26 Councils, the 5 Education and Library Boards, the Housing Executive, Translink, many Housing Associations, schools and colleges and a range of other bodies.

NILGOSC serves 95,382 members consisting of 44,465 contributing members, 28,500 pensioners and 22,417 deferred members.

Unlike the other public service pension schemes in Northern Ireland the LGPS pays its pension from a pension fund, rather than from the Exchequer. Due to the 'funded' nature of the LGPS NILGOSC has urged caution when making changes to the Scheme, especially when making any changes that would be to the detriment of members. The reason being that, if members choose to leave the scheme, the scheme will become more expensive, therefore contribution rates would have to rise, contrary to the Coalition Government's aspiration to make the Scheme less expensive.

### **Public Service Pension Bill 2013**

The implementation of the Bill has implications for our members, employers and NILGOSC itself as administrator.

The primary implication for the members of the Scheme is the increase in Normal Retirement Age in line with the new State Pension Ages. The change from a Final Salary scheme to a Career Average Scheme will also affect members but differently depending on their pay progression profile. For Employers, the main implication is the introduction of the Employer Cost Cap, designed to keep control over the costs to employers. However the Cost Cap will not include cost increases arising from adverse investment performance and therefore Employers could still be exposed to rising contribution rates if the financial markets underperform.

However our submission to the Committee concentrates on the effects on NILGOSC as the Scheme Administrator.

The Draft Bill would appear to have two main purposes, firstly to set out the nature of the new public service pension schemes as from 2014 and 2015. Secondly, to set out revised governance arrangements for the new schemes.

### **[Clause 18 (4)(a)] New LGPS Scheme from 1 April 2014**



As the Scheme administrator the implementation of the new LGPS 2014 scheme by 1 April 2014 will be a challenge. In advance of the commencement date NILGOSC will need to:-

- Reprogram its IT systems to reflect the new scheme rules
- Rewrite all scheme guides and literature
- Communicate the scheme changes to its 95,382 members and respond to individual queries
- Brief the 205 scheme employers and other relevant stakeholders and respond to queries
- Redesign internal processes and fully train its staff

The work involved cannot start in earnest until the scheme regulations have been made by the Department of the Environment. Our latest understanding is that the Department expect to have the regulations for the new scheme made by the end of October 2013. If that is the case NILGOSC will then have only 5 months to prepare itself, its membership and employers for the changes due from 1 April 2014.

The Department for Communities and Local Government intends to introduce the LGPS for England and Wales on 1 April 2014. The Scottish Executive intends to introduce the new LGPS for Scotland on 1 April 2015.

#### **[Clauses 5,6,11,14,15 ] Revised Governance Arrangements**

The proposed changes to the Governance arrangements are less problematic for NILGOSC. The NILGOSC Committee already acts as the 'Pensions Board', and has equal numbers of Employer and Employee representatives. The Department already has a group in place which has acted as a 'Scheme Advisory Board' since 2009. Valuations are already undertaken on a 3 yearly basis for the LGPS and NILGOSC already produces Benefit statements for its members and annual accounts by way of an Annual Report. NILGOSC also follows guidance produced by the Pensions Regulator as best practice. However we have a concern regarding the new responsibility of DFP to issue directions regarding some of the proposed changes (see below).

#### **[Clause 17] Oversight of the Pensions Regulator**

The LGPS is already regulated by the Department of the Environment and we believe it is a well run scheme demonstrated by the existence of those key governance elements mentioned previously. Therefore the extension of the Pensions Regulator's powers to cover the LGPS seems redundant, and an unnecessary cost for the Scheme to bear. That said we do not expect to have any difficulty in complying with the Regulators guidance.

The Public Service Pensions Schemes clearly are large schemes with a much stronger employer covenant (ie a low default risk) than most of the private sector pensions schemes in the UK. We hope that the Pensions Regulator will take this into account when issuing guidance for the sector.

#### **[Clauses 3(5),9(2),11(2),12(3),14(2)(b)] Role of DFP**

The draft Bill sets out a significant shift away from control over the scheme by its stakeholders (the Department in consultation with members and Employers) to central control by DFP. As stated previously the LGPS is a funded scheme, unlike the other local public service schemes. Every 3 years an actuarial valuation is undertaken, examining the schemes assets and liabilities, and setting

pension contribution rates. Changes in scheme benefits or financial assumptions used will affect the pension contribution rates that need to be paid. NILGOSC is therefore concerned that DFP will make decisions, about the issues set out below, that will be sensible for the unfunded schemes but could cause financial problems for the funded LGPS scheme

| Clause   | Comment                                                                                                                                                                       |
|----------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 3(5)     | DFP now have to consent to any LGPS Scheme regulations made by the DOE.                                                                                                       |
| 9(2)     | DFP decide what revaluation (or devaluation) index will be used whilst this has been previously determined by the DOE following negotiations with Employers and Trade Unions. |
| 11(2)    | DFP to issue direction regarding the triennial actuarial valuation. Previously the Scheme actuary has followed advice of the professional body.                               |
| 12(3)    | DFP will issue direction regard Employer Cost Cap                                                                                                                             |
| 14(2)(b) | DFP to issue direction on Benefit Information Statement                                                                                                                       |

We would therefore urge DFP to consult with ourselves and relevant stakeholders in advance of making directions on any matter affecting the LGPS and to consider making separate directions for the LGPS as distinct from the other Public Service pension schemes.

### **The Coalition Government's Pension Policy**

Finally I would like alert the Committee to a forthcoming issue for the LGPS and all public service pension schemes in Northern Ireland.

The Hutton review was designed to make the public sector pension schemes sustainable and affordable. The matters outlined in the draft Bill facilitate that. The detailed agreement reached between the Trade Unions and Employers for the new Local Government Pension Scheme is estimated to save Employers approximately 2% of salary costs which is to be welcomed.

The Westminster Government has recently introduced to Parliament its draft bill on the Single State Pension. The Assembly will consider the equivalent Bill for Northern Ireland in due course. Within the Westminster bill is the recommendation that 'Contracting-Out' for employers who contribute to pension schemes is ended from 2016. Employers currently receive a rebate on their National Insurance costs of approximately 3.4%. The end of this rebate will therefore increase Employers costs by up to 3.4%.

On the one hand the Government's policy of public sector scheme reform is estimated to save Employer's costs but on the other the changes to the National Insurance regime will cost employers significantly more. That change will also increase the costs for employees.

The Government may attempt to solve this paradox through increased funding of public sector bodies however this will not greatly assist the 205 employers in the LGPS(NI) scheme as many are not 100% government funded.

As a result of the Coalition combined policies Employers in the LGPS(NI) scheme will end up paying increased Employer pension contributions. NILGOSC's concern is that more Employers will seek to leave the Scheme due to financial restraints. This is in addition to our concern that the increase in costs to members will also give rise to members choosing to leave the scheme.

If the Committee require any further information please do not hesitate to contact me.



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28 August 2013

Dear Sheila

***Public Service Pensions Bill 2013***

Thank you for your letter of 16 July 2013 and for the opportunity to submit our comments on the reforms to be implemented under the above Bill. We would be interested to know if there will be any information sharing events or update events prior to implementation of the new legislation, given the complexity of the subject matter. We are grateful for the information summary and comparison attached to your letter.

Our comments are;

1. What is the effective date of the proposal and are all contributions and benefits of the current scheme secure and without impact from the proposals?
2. A worked example would be useful, illustrating the before and after situation.
3. The current scheme offers the opportunity of making Regular Voluntary Contributions; does this opportunity remain in the new system?

Yours sincerely

Mary O'Dwyer  
Head of Finance

19<sup>th</sup> August 2013

Committee Clerk  
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Dear sir/ madam,

**Call for Evidence - Public Service Pensions Bill**

The Northern Ireland Local Government Association (NILGA) is the representative body for the twenty six district councils in Northern Ireland. Our councils have a direct interest in particular in the Northern Ireland Local Government Pension Scheme (LGPS) as it was established to provide pensions to the local government workforce on behalf of district councils.

Local councils in Northern Ireland employ some 11,600 people, the considerable majority of whom are members of the LGPS.

We wish to comment on those clauses of the Bill relating to Governance (clauses 4 to 7) and in particular on clause 5(2) and clause 7.

**Governance**

NILGA supports the outline of governance requirements contained in the Bill. In making those high level requirements operational our priorities are to ensure that governance arrangements are both effective and efficient. Effective in terms of proper oversight, scrutiny, decision taking and separation of roles and efficient in terms of having structures which are not unnecessarily unwieldy or which place an undue financial burden on the scheme.

The Bill sets out governance roles for public sector pension schemes by identifying essentially four key roles:

- Responsible Authority - the person who makes regulations for the scheme (Clause 2). In the case of the LGPS this is the Department of the Environment (Schedule 2) with the consent of the Department of Finance and Personnel (Clause 3).
- Scheme Manager - the person responsible for managing or administering the scheme (Clause 4).
- Pension Board - a board with responsibility for assisting the scheme manager in securing compliance with scheme regulations, other legislation covering governance and administration and the requirements of the Pensions Regulator (Clause 5).
- Scheme Advisory Board - responsibility for providing advice to the Responsible Authority and the Pension Board (Clause 7).

**Pension board - Clause 5(2)**

This clause requires that the Northern Ireland Local Government Officers Superannuation Committee must be appointed as the Pension Board for the LGPS.

We read this as having the effect that NILGOSC would act as both the Pension Board and also the Scheme Manager (it is assumed that there are no plans to change the existing role of NILGOSC as the body responsible for administering the scheme). Whilst such an arrangement is permissible in the equivalent GB Bill, it is not pre-determined in the way the Northern Ireland Bill is for local government only.

This reduces the distinct roles from four (which it would appear will exist for other public sector schemes) to three.

Whilst it could be seen as being administratively convenient to merge the roles of Scheme Manager and Pension Board into a single organisation, we would have concerns about this.

1. The roles of the two are very different and may require different resources, for example, investment skills in one role and audit skills in the other
2. A single committee constitution may not be able to effectively encompass the decision making requirement of the Scheme Manager role and the 'assistance' role (specified in the Bill) of the Pension Board
3. The cross scrutiny functions will prove difficult to apply and demonstrate within one committee with less than clear separation of functions, roles and responsibilities
4. The intention of the reforms in this regard was to improve scheme governance, not necessarily to continue with the status quo.

We are not convinced, for example, that splitting responsibilities within NILGOSC between Scheme Manager and Pension Board responsibilities would be capable of maintaining the standards and clarity of governance that should be expected.

We do though feel that it should be possible to maintain appropriate governance structures for NILGOSC in its role as Scheme Manager and have a separate entity acting as Pension Board without adding unduly to complexity or costs to the scheme.

For these reasons, on balance, we cannot support the content of Clause 5(2).

**Scheme Advisory Board – Clause 7**

This would be a high level Board advising the Department of the Environment on, for example, regulatory changes to the scheme and also providing advice to Pension Boards.

We are conscious that in GB the Scheme Advisory Board will operate at scheme (rather than individual fund) level. The Bill suggests an Advisory Board for Northern Ireland that would simultaneously operate at both scheme and fund level (as there is only one LGPS fund in Northern Ireland). On the face of it this would appear excessive.

Given that there already exists (though currently only in 'shadow' form) a Scheme Advisory Board for the LGPS in GB, we feel this body could also act as the Board for the LGPS in Northern Ireland.

Our view is that this would give full access for the Department, the Minister and Pension Board to the highest level of expert advice as and when required, but as it would be operating across the range of LGPS schemes should represent a much lower cost.

In view of the above we would suggest that provision be made within clause 7 to appoint the Scheme Advisory Board established for schemes in England and Wales as the Board for Northern Ireland also.

Should you require any further information then please feel free to contact me.

Yours sincerely

John Adams  
Head of Workforce



Our Ref: TB/AC

25 July 2013

Committee for the Environment  
Room 416  
Parliament Buildings  
Ballymiscaw  
Belfast  
BT4 3XX

Dear Sir/Madam

**Re: Public Service Pensions Bill 2013**

I refer to your letter of 16 July 2013 and while this Council has provided a reply to the consultation I have summarised our comments on the proposed scheme design changes below:-

1. Moving to a Career Average Revalued Earnings (CARE) scheme – no concerns.
2. Accrual rate of 1/49<sup>th</sup> – we question why such a significant change in the accrual rate is necessary and query whether a lesser change of accrual rate along with less of an increase in employee contributions would have been more appropriate.
3. Revaluation Rate – no concerns.
4. Normal Pension Age – no concerns.
5. Contribution Flexibility. While we agree that employee contribution flexibility is good we do not agree that employer contributions should remain at full rate if an employee is paying a lower rate. We would also suggest that there should be more than one contribution flexibility rate.
6. Death in Service Lump Sum – no concerns.
7. Definition of Pension Payable. While we agree that non-contractual overtime and additional hours payments should be pensionable we would like to point out that local government employees who are paid above Spinal Point 28 are not entitled to be paid overtime therefore they will be adversely affected by this change. We would also like to highlight that there will be administrative difficulties associated with this proposal and legislation needs to be very clear to ensure the scheme is correctly administered.
8. Vesting Period. It is our view that 1 year is more appropriate.
9. Ill-Health Retirements – no concerns.
10. Survivor Benefits. We would question if there could not have been some improvements made to the 1/160<sup>th</sup> accrual rate for death in service survivor benefits.
11. Commutation Rate – no concerns.
12. Members Contribution Rate. It is our view that the salary range is too wide in particular Band 5 which goes from £43,000 to £85,000. We also feel that the increases from 6.8% in band 4 to 8.5% in band 5 and 8.5% to 10.5% are too big and could have a detrimental effect on employees progressing to higher paid positions or even through incremental progression within their pay scale. It could also lead to higher paid employees opting out of the scheme.

Brendan Hegarty B.S.Sc. F.C.A. Chief Executive

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It is possible that an employee could receive a pay rise but ultimately take home less pay. We would suggest the bands in the 2009 scheme are appropriate and do not need to be changed or that when a person's salary exceeds a certain level e.g. £85,000 they pay the higher rate contribution on the amount they earn in excess of £85,000 and pay the lower contribution rate on the salary up to £85,000. We would also question whether consideration has been given to incremental rates.

I trust you find these comments useful.

Yours faithfully

Brendan Hegarty  
Chief Executive



# Submission from Education Committee



Northern Ireland  
Assembly

**Mr Mervyn Storey**  
*Chairperson, Committee for Education*

Mr Daithi McKay  
Chairperson  
Committee for Finance and Personnel  
Parliament Buildings

11 October 2013

**Our Ref:** PMcC/SMcG/XXX

Dear Daithi

## **Public Service Pensions Bill**

The Committee for Education's consideration of the Public Service Pensions Bill concluded at its meeting on Wednesday 9 October 2013 with a final oral evidence session from Department of Education officials.

The Committee agreed that I should forward to you the written briefings from the Department of Education on this matter (please see attached) and advise of the relevant links to the Hansard record of oral evidence sessions:

Northern Ireland Teaching Council Wednesday 11 September 2013 -  
<http://www.niassembly.gov.uk/Assembly-Business/Official-Report/Committee-Minutes-of-Evidence/Session-2013-2014/September-2013/Public-Service-Pensions-Bill-Northern-Ireland-Teachers-Council-Briefing/>

Department of Education on Wednesday 18 September 2013 -  
<http://www.niassembly.gov.uk/Assembly-Business/Official-Report/Committee-Minutes-of-Evidence/Session-2013-2014/September-2013/Public-Service-Pensions-Bill-DE-Briefing/>

*Committee for Education*  
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The Clerk will forward the final link from the evidence session on 9 October 2013 shortly.

The Committee also agreed that I should highlight that the Committee for Education has noted with some concern the sensitivity of the Northern Ireland Teachers' Pension Scheme (NITPS) liability estimates to the HM Treasury discounting rate and complex assumptions relating to the retirement profile of teachers.

The Committee also expressed concerns in respect of the impact which:

- the proposed new pension arrangements may have on female teachers, and other teachers, who owing to caring responsibilities may have gaps in their career history and consequently pension contributions;
- the proposed alteration of the retirement age for teachers may have on staff morale and well-being and the educational experience for pupils; and
- changes to the retirement age will have on employment levels for newly qualified teachers.

Yours sincerely

**Mr Mervyn Storey MLA**  
**Chairperson, Committee for Education**

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Department of  
**Education**

[www.deni.gov.uk](http://www.deni.gov.uk)

AN ROINN  
**Oideachais**

MÁINNSTRÍE  
**Lear**

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Your ref: PMcC/SMcG/891

1 October 2013

Dear Peter

## **PUBLIC SERVICE PENSIONS BILL**

Your letter of 20 September 2013 refers.

Following a briefing from officials on 18 September 2013 the Committee has requested further information from the Department.

### **Information on the impact that the proposed introduction of Career Average Re-valued Earnings (CARE) arrangements will have on different categories of teaching staff**

Please see detail attached in Annex A providing:

1. a comparison of Career Average versus Final Salary; and
2. background information on Career Average Re-valued Earnings (CARE) arrangements.

### **Clarification as to whether previously accrued pension contributions will be re-valued by RPI or CPI**

Indexing is the basis for determining cost of living increases for public service pensions. The Coalition Government announced in its Budget statement on 22 June 2010 that from April 2011 increases in pensions would be based on the annual rise in the



Consumer Price Index (CPI). The Department does not have any scope to vary the approach as indexing is not a devolved issue.

Accrued benefits up to April 2015 continue to be paid in line with Final Salary Scheme arrangements. Once a pension is in payment it will increase with reference to CPI. This applies to all pension benefits irrespective of when contributions were made.

**Clarification as to the consequences for members of the NITPS in respect of contributions and benefits in the event that liabilities exceed expectations**

The initial employer cost cap expressed as a percentage of pensionable earnings will be set with reference to the 2012 Valuation of the NITPS. The Public Service Pension Bill includes provisions for the Department of Finance and Personnel (DFP) to set the margins either side of the initial employer cost cap. It is anticipated that this margin will be plus or minus 2% of pensionable earnings.

In a case where the NITPS would otherwise go beyond prescribed margins, scheme regulations will provide for a procedure to determine how costs are to be brought back within the specified margins. The options for achieving this could be specified changes in contributions, or in benefits. The first stage of the process would be to try to reach agreement with Teachers' Trades Unions and with employers on the steps required to achieve the target cost for the scheme.

In the event of agreement not being reached then default mechanism provisions set by regulations would be invoked. It is intended that the default method would be a change to accrual rates rather than to member contributions.

**Copy of the current NITPS annual valuation report**

The most recent Report of the Actuary is included within the Annual Scheme Statements (pages 8 to 13). The Scheme Statement is available on the DE website at:

[http://www.deni.gov.uk/tss\\_annual\\_scheme\\_statements\\_2013.pdf](http://www.deni.gov.uk/tss_annual_scheme_statements_2013.pdf)

Yours sincerely

**VERONICA BINTLEY**  
**Departmental Assembly Liaison Officer**

## ANNEX A

**Information on the impact that the proposed introduction of Career Average Re-valued Earnings (CARE) arrangements will have on different categories of teaching staff**

**1. Comparison of Career Average versus Final Salary**

The table below provides a comparison between career average and final salary schemes illustrating four separate career paths.

**Teacher A** – Starts at point 1 of the teacher's main scale (£21,558) and moves through the pay scale at the standard speed of progression with no promotions or allowances to a finishing salary of upper pay scale 3 (£36,756).

**Teacher B** – Starts at point 1 of the teacher's main scale (£21,558) and is effectively promoted at the earliest opportunity throughout his/her career to reach the top of the leadership pay scale (£105, 097) by age 40.

**Teacher C** - Starts at point 1 of the teacher's main scale (£21,558) and moves through the pay scale at the standard speed of progression but is promoted to point 20 of the leadership scale (£59,809) after 20 years and then progresses up the leadership scale to a finishing salary of £65,693.

**Teacher D** - Starts at point 1 of the teacher's main scale (£21,558) and moves through the pay scale at the standard speed of progression but is promoted to point 20 of the leadership scale (£59,809) 5 years from his/her retirement and then progresses up the leadership scale to a finishing salary of £65,693.

|                  | <b>Pension based on Career Average</b> | <b>Pension based on Final Salary</b> |
|------------------|----------------------------------------|--------------------------------------|
| <b>Teacher A</b> | £ 37,141                               | £26,341                              |
| <b>Teacher B</b> | £92,079                                | £75,319                              |
| <b>Teacher C</b> | £51,493                                | £47,080                              |
| <b>Teacher D</b> | £38,689                                | £47,080                              |

Calculations are in today's prices and are predicated on the assumption that pay increases are equal to inflation.

Using the example of Teacher A. Should pay increases consistently exceed inflation throughout the whole period then the difference between the career average and final salary pensions would reduce proportionately to the point that, where salary increases exceed inflation for the whole period by around 1.6%, then the career average pension and the final salary pension would be almost identical. Should the difference exceed

1.6% then final salary would prove to be more advantageous. The opposite effect would apply should salary increase at a slower rate than inflation, as has been the case in recent years.

### **Conclusion**

For most teachers, the pension they receive will be at least as good as, if not better, than under the current scheme. However, Normal Pension Age will be linked to State pension age.

## 2. Background Information

### What is CARE?

A career average scheme is calculated using the scheme member's average salary over the entire period of service. In making the calculation, the member's salary is revalued to take account of the effects of inflation. Career average arrangements are to be introduced to the Northern Ireland Teachers' Pension Scheme (NITPS) by April 2015 to meet the deadline for implementation of pension reform and to avoid cost penalties.

Key elements of a pension scheme design based on a career average include:

- an accrual rate of 1/57<sup>th</sup> of pensionable earnings each year; and
- revaluation of active scheme members' benefits in line with CPI<sup>1</sup> +1.6%.

### How scheme members' pensions will be calculated based on career average.

Each year a scheme member will 'bank' an amount of pension at a rate of 1/57<sup>th</sup> of their pensionable earnings in that year.

#### Example:

Sarah's earnings for 1 April 2015 to 31 March 2016 are £30,000. She will earn a pension of:

$$£30,000 \times 1/57^{\text{th}} = £526.32$$

If Sarah earns £31,000 in the following year, to 31 March 2017, her benefits 'banked' for that year would be:  $£31,000 \times 1/57^{\text{th}} = £543.86$

Total pension is then made up of the amounts banked each year, with index-linking applied.

### Revaluation (index-linking) of benefits

The value of the pension is maintained by applying index-linking annually. Different rates of indexation will apply depending upon whether the scheme member is active (i.e. working and contributing to the scheme) or has become deferred (i.e. no longer contributing to the scheme but has not yet drawn their pension). For the NITPS, the rates are CPI + 1.6% whilst the member is in active service or CPI where a member is deferred.

<sup>1</sup> References to "CPI" relate to the Consumer Prices Index which is currently used as the basis for determining cost of living increases for public service pensions. The index used could change in the future.

The index-linking addition will be applied at the start of each subsequent scheme year, i.e. April. Assuming that CPI is 2.5% throughout, then Sarah's pension would be indexed as follows:

- At the start of her second year of service (April 2016) her pension 'banked' in year 1 (£526.32(A)) is increased by 4.1% (CPI of 2.5% plus 1.6%)
  - Index-linking addition:  $£526.32 \times 4.1\% = £21.58(B)$
  - New total pension = £547.90(C) (i.e. A+B)
- At the start of her third year of service (April 2017), her revalued benefits from year 1 and her benefits banked in year 2 (£543.86), are collectively index-linked as follows (assuming CPI=2.5%).
  - Revalued pension from Year 1 = £547.90(C)
  - Pension from Year 2 = £543.86(D)
  - Equals total pension at end of year 2 = £1,091.76(E)
  - Index-linking addition at start of year 3:  $£1,091.76 \times 4.1\% = £44.76(F)$
  - New total pension = £1,136.52(G) (i.e. E+F)

So at the start of her third year, when Sarah has earned £30,000 and £31,000 for the previous two years, her total pension earned will be £1,136.52 and any amounts earned in subsequent years will be added to that, with index-linking applied, to form her final pension.

### Transition

Transitional protection will apply to members who have service in both the final salary and reformed schemes. This is designed to allow scheme members to have sufficient time to adjust their pension savings – through providing protection for members who are near their current Normal Pension Age (NPA)<sup>2</sup>.

#### i. Scheme members who have Full Protection

Scheme members who, as of 1 April 2012, have 10 years or less to their current pension age will see no change in when they can retire, or any decrease in the amount of pension they receive at their current NPA. Benefits will continue to be determined on a final salary basis.

#### ii. Scheme members who have Tapered Protection

<sup>2</sup> The Normal Pension Age (NPA) for new entrants to the scheme who joined on or after 1 April 2007 is age 65. For those joining before that date, NPA is age 60 (subject to certain continuous service conditions).



Scheme members who are within a further 3.5 years of their NPA on 1 April 2012, i.e. up to 13.5 years from their NPA, will have limited protection with linear tapering so that for every month of age that they are beyond 10 years of their NPA, they lose 2 months of protection. They will stay in their current final salary scheme until their protection period ends. At the end of which, they will be moved to the reformed scheme. So, for example, members who are aged 46 years and 7 months on 1 April will move to the reformed scheme on 1 June 2015. Members who are aged 49 years and 11 months on 1 April 2012 will move to the reformed scheme on 1 February 2022.

iii. Transitional scheme members

Scheme members who have benefits in both the final salary and reformed scheme include:

- any scheme members with final salary benefits who move to the career average arrangements on, or after, 1 April 2015; and
- scheme members with tapered protection who then move to the career average scheme (see ii).

When a transitional scheme member takes their retirement benefits, separate calculations will apply to the final salary and career average elements of the pension, with the relevant amounts combining to form one payment. For all scheme members, any benefits built up in the final salary scheme will be protected and remain in that scheme. When benefits are calculated at retirement, they will be linked to the member's most recent pensionable earnings (but using the final salary scheme rules).

## Further letter from Education Committee

Committee for Education  
Room 375  
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**To:** Shane McAteer  
Clerk to the Committee for Finance and Personnel

**From:** Peter McCallion  
Clerk to the Committee for Education

**Date:** 11 October 2013

**Subject:** Public Service Pensions Bill

Shane,

You wrote to me previously regarding the Committee Stage of the Public Service Pensions Bill.

Please find appended correspondence from the Chairperson of the Education Committee indicating the conclusion of the Education Committee's consideration of the relevant legislation.

Regards

**Peter McCallion**  
**Committee Clerk**

## DoJ response re PSPB



**Northern Ireland  
Assembly**

**Committee for Justice**

**Room 242**

**Parliament Buildings**

**Tel: +44 (0)28 9052 1629**

E-mail: [committee.justice@niassembly.gov.uk](mailto:committee.justice@niassembly.gov.uk)

**From: Christine Darrah**  
**Clerk to the Committee for Justice**  
**Date: 14 October 2013**  
**To: Shane McAteer**  
**Clerk to the Committee for Finance and Personnel**

### **PUBLIC SERVICE PENSIONS BILL**

At its meeting on 3 October 2013, the Committee for Justice considered information provided by the Department of Justice on the impact of the Public Service Pensions Bill or the pension schemes that fall within the Department's remit or affect its employees.

The Committee noted the position of the Minister of Justice in relation to those schemes that fall within his remit and agreed that it will consider the related subordinate legislation in due course.

The Committee also agreed to forward the information provided by the Department of Justice to the Committee for Finance and Personnel and draw its attention to the issue raised by NIPSA and other Trade Unions regarding the effect of the Principal Service Pension Scheme, which falls within the remit of the Department of Finance and Personnel on the normal pension age for prison officers and the proposed amendment to clause 10(2).

A copy of the information is attached.

**Christine Darrah**  
**Committee Clerk**

FROM THE OFFICE OF THE JUSTICE MINISTER



Department of  
**Justice**  
[www.dojni.gov.uk](http://www.dojni.gov.uk)

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Our ref SUB/1250/2013

Mrs Christine Darrah  
Clerk to the Committee for Justice  
Room 242  
Parliament Buildings  
Ballymiscaw  
Stormont BELFAST  
BT4 3XX

9 September 2013

Dear Christine

## **PUBLIC SECTOR PENSIONS BILL**

Thank you for your letter of 1 August 2013, in relation to the Public Service Pensions Bill and its implications for a wide range of public sector schemes.

With regard to pension schemes which fall within the responsibility of the Department of Justice, Members will recall noting the information provided by the Department at the Committee meeting on 23 February 2012, in relation to the long term reform of Police Pensions, and at the meeting on 25 April 2013, relating to a proposal to make a pension scheme for holders of devolved judicial offices.

With regard to your request for information on public sector pension schemes which fall under the responsibility of the Minister for Justice, or those which affect employees in both the Department of Justice, its Agencies and Non Departmental Public Bodies (NDPB), a detailed response to each of the queries raised in your letter is contained in Annexes A to I. Each Annex provides information on those

FROM THE OFFICE OF THE JUSTICE MINISTER



schemes which fall under the responsibility of the Department of Justice, before addressing pensions' schemes (*for departmental staff, NDPB and agencies as listed in your letter*) which are the responsibility of the Department of Finance and Personnel or Department of Environment.

I hope this provides the information sought by the Committee and assists the Members' consideration of the Bill before providing a view to the Committee for Finance and Personnel.

**TIM LOGAN  
DALO**

**ENC**

## **Annex A**

### **The likely implications for the Department of Justice and each of the Criminal Justice organisations that will be affected by the proposed changes.**

#### **Schemes under the responsibility of the Department of Justice**

1. The Minister of Justice is responsible for police pension schemes for the Police Service of Northern Ireland (PSNI) and the PSNI (Reserve) and also for devolved Judicial office holders.

#### **Police Pension schemes**

2. There are currently two pension schemes operating within the PSNI:

- the Police Pension Scheme (PPS) governed by the Royal Ulster Constabulary Legislation 1988 (as amended), is closed to new members as of 5 April 2006; and
- the new Police Pension Scheme (NPPS) governed by the Police Pension (Northern Ireland) Regulations 2009 (as amended), came into operation on 5 April 2006 and is the current scheme open to those wishing to join the police pension scheme. The scheme was extended to members of the PSNI Part Time Reserve on 1 April 2013.

#### **PSNI and PSNI (Part Time) Reserve**

3. The Minister for Finance and Personnel has made it clear that failure to have a career average pension scheme in place by 2015 will result in a financial penalty by HM Treasury. The Justice Minister has agreed in principle to introduce the Public Service Pension (Northern Ireland) Bill with respect to Police Pension Schemes relating to officers in the PSNI, in order to maintain parity with similar legislation recently adopted by colleagues in England, Scotland and Wales and the resultant removal of the risk of financial penalty by Treasury (HMT) to the Northern Ireland Block.

### **Devolved Judicial office holders' pension schemes**

4. The Lord Chancellor is the responsible authority under the Public Service Pensions Act 2013 for the non-devolved judiciary in Northern Ireland, broadly judicial office holders sitting in courts.

5. Devolved judicial office holders are those sitting in tribunals. The Department is responsible for the pension arrangements for the Lands Tribunal (one judicial office holder) but will be the responsible authority for all devolved judicial holders under the Public Service Pensions (Northern Ireland) Bill. Responsibility for the other devolved judicial office holders currently lies with the Department for Employment and Learning (DEL) in respect of the members of the Industrial and Fair Employment Tribunals and with the Department for Social Development (DSD) in respect of members of the Appeals Tribunal. Any financial or other costs arising will be incurred by the respective Departments.

### **Schemes under the responsibility of the Department of Finance and Personnel**

6. Responsibility for the Principal Civil Service Pension Scheme (Northern Ireland) PCSPS (NI) and its named Schedule 1 bodies falls to the Department of Finance and Personnel. It should be noted that both Prison Service staff and Prison officers have pension provision made in the PCSPS (NI).

7. There are five pension schemes which operate within the PCSPS (NI). These are:

- Classic - The old PCSPS (NI) renamed. This was available to those who joined the scheme before 1st October 2002 and is closed to new members.
- Classic plus - A combined approach those members who joined before the 1st October 2002 were offered - allowing them to change from their old classic arrangements into classic plus. This scheme is also now closed to new members.
- Premium - A scheme available to members joining after 1st October 2002. Members who joined before the 1st October 2002 were offered the choice to change from their old classic arrangements into premium. This scheme is now closed to new members.

- Nuvos – the current scheme which is available to new members joining on or after 30 July 2007.
- Partnership - A new arrangement, available to those joining after 1st October 2002. The partnership pension account is a type of stakeholder pension. While this scheme remains open it is not compliant under the terms of automatic enrolment. DFP are currently working towards compliance.

8. The Public Service Pensions Bill provides a framework for reformed schemes. The scheme level impacts may differ from Scheme to Scheme. The secondary legislation process will provide scope for relevant Ministers to consider what variations may be possible and appropriate for each scheme.

9. The PCSPS (NI) currently already operates a career average pension scheme with a pension age of 65 for all new entrants from July 2007. The majority of civil servants who entered service before this date are currently members of a final salary arrangement with an associated pension age of 60.

10. Prison officers in post on 3 September 1989 have a pension age of 55. Those in post on or after 4 September 1989 and before 30 July 2007 have a pension age of 60. Prison officers appointed on or after 30 July 2007 have a pension age of 65.

11. The Local Government Pension Scheme (NI) currently has a pension age of 65 for all new entrants. It operates a final salary pension arrangement for its existing staff.

12. The Bill will introduce a core requirement for all DOJ staff in the civil service pension scheme and for named Schedule 1 bodies (including those on the list provided by the Justice Committee in its letter of 1 August) to be moved to new career average pension scheme for future service from April 2015.

13. HM Treasury has confirmed that any slippage in Northern Ireland from the Government's timetable of reform will result in a financial penalty to the Northern Ireland allocated fund. The Department of Finance and Personnel has estimated the total estimate of the annual recurring cost of delaying the reforms is £300m.



**Schemes under the responsibility of the Department of the Environment**

14. The Probation Board and the Northern Ireland Legal Services Commission are employing authorities in the Local Government Pension Scheme and as such, will be affected by the Department of the Environment's proposals to introduce revised pension arrangements from 1 April 2014. The then Minister of the Environment asked the Local Government Pension Scheme Review Group (the Review Group) to consider and make recommendations to him on scheme design, governance and cost control arrangements to be introduced from 1 April 2014. The Review Group is chaired by a senior official from the Department of the Environment and comprises four employer representatives, four trade union representatives and two representatives from the administering authority (Northern Ireland Local Government Officers' Superannuation Committee). It did not prove possible to get agreement on a scheme design.

15. The Department of the Environment carried out a consultation on a proposed scheme design (from 11 April to 6 June 2013) which included a pension on a career average revalued earnings basis and a normal pension age of 65 or the individual's State Pension Age, whichever is the higher. The Probation Board responded to that consultation. The comments made by the Probation Board and the other respondents are under consideration by the Department.

## **Annex B**

**What consultation the Department of Justice or any of the individual criminal justice organisations has undertaken regarding the proposed changes and what key issues have emerged?**

### **Schemes under the responsibility of the Department of Justice**

#### **Police Pension schemes**

1. The Police Negotiation Board (PNB) looks at reform proposals in detail and, while this includes officer representation, the PNB can only be advisory on matters of policy as the Minister is responsible for policy and is ultimately accountable to the Executive for policy decisions.
2. The matter of the proposed changes to the police pension schemes under the Public Sector Bill has been a matter for discussion at PNB since January 2012. In March 2012, the Home Secretary wrote to the PNB chairperson with a proposal which outlined the United Kingdom Government's preferred design for reformed pension scheme, listing the elements of the scheme where flexibility exists to depart from the preferred design.
3. Following constructive discussions at the PNB, and having given due consideration to the United Kingdom Government's 'Police Pension Scheme: Reform Design Framework', the Minister of Justice decided to adopt the same approach for the reform of the PSNI pension scheme being mindful of the Executive's decision of 8 March 2012. Detailed and technical discussions on the design proposal for a reformed police pension's scheme continue at the PNB.
4. Initial considerations related to transitional protection of officers, as officers do not neatly fall into the Chancellor's protection for those in their current scheme who are within 10 years of their scheme's retirement age as of 1 April 2012.
5. The police pension scheme is more complex than many other public sector schemes in that an officer can retire after 30 years service or at age 50 with 25 years service (actuarially reduced). Following many discussions which included the Government Actuary and Treasury (*the Department also kept DFP abreast of these proposals*) a way forward has been agreed at the PNB. Indeed the extension of the transitional period from three and a half years to four years has been as a direct result of a proposal brought forward by the Police Federation for Northern Ireland.

Details of these proposals have been issued in an information circular on 7 May 2013 to all staff associations, the Policing Board and the Chief Constable.

6. Current discussions at the PNB are on transitional protection for police officers who work part time or who are on a career break. It is anticipated that further information will issue in early autumn in relation to this.

#### **Devolved Judicial office holders' proposed schemes**

7. The Department consulted the member of the Lands Tribunal in March 2013 on the proposed changes to his pension arrangements. No issues were raised by this member.

#### **Schemes under the responsibility of the Department of Finance and Personnel**

8. The Department of Finance and Personnel is co-ordinating consultation on the cross-cutting impacts of the Bill. A public consultation on the policy underpinning the Public Service Pensions Bill ended on 15 April 2013. DFP's Civil Service Pensions Branch (CSP) co-ordinated the consultation process on behalf of the Northern Ireland Public Sector Pension Schemes. The Prison Service distributed the relevant CSP circulars to all staff informing them of the consultation.

9. Views were sought from trade unions (including the Northern Ireland Public Service Alliance (NIPSA) and the Prison Officer's Association (POA)), individuals and other groups with a vested interest in any of the Public Service pension Schemes. No individual response was received from the POA as the Northern Ireland Committee – Irish Congress of Trade Unions (NIC-ICTU) provided collective representation for both affiliated and non-affiliated trade unions representative of employees affected by the Bill, including the POA.

10. The central NIC-ICTU response to the consultation, referenced above, was received on 15 April 2013.

11. The Department of Finance and Personnel published a formal response to the consultation on 20 May 2013. The document addressed issues raised in the course of the consultation and set out the department's intention to proceed to introduce the Bill. The published document can be accessed through the following link: [www.dfpni.gov.uk/civilservicepensions-ni/index/latest-news/public\\_service\\_pensions\\_bill.htm](http://www.dfpni.gov.uk/civilservicepensions-ni/index/latest-news/public_service_pensions_bill.htm).

### **Schemes under the responsibility of the Department of the Environment**

12. The Probation Board and the Northern Ireland Legal Services Commission are employing authorities in the Local Government Pension Scheme and as such will be affected by the Department of the Environment's proposals to introduce revised pension arrangements from 1 April 2014. The then Minister of the Environment asked the Local Government Pension Scheme Review Group (the Review Group) to consider and make recommendations to him on scheme design, governance and cost control arrangements to be introduced from 1 April 2014. The Review Group is chaired by a senior official from the Department of the Environment and comprises four employer representatives, four trade union representatives and two representatives from the administering authority (Northern Ireland Local Government Officers' Superannuation Committee). It did not prove possible to get agreement on a scheme design.

13. The Department of the Environment carried out a consultation on a proposed scheme design (from 11 April to 6 June 2013) which included a pension on a career average revalued earnings basis and a normal pension age of 65 or the individual's State Pension Age, whichever is the higher. The Probation Board responded to that consultation. The comments made by the Probation Board and the other respondents are under consideration by the Department.

## Annex C

**What consultation the Department of Justice or individual criminal justice organisations has undertaken with the relevant trade unions and in particular the prison service and police service unions and what key issues have they highlighted?**

### **Schemes under the responsibility of the Department of Justice**

#### **Police pension schemes**

1. The Police (NI) Act 1998 forbids police officers from membership of any trade union, or to take industrial action. The Police Association was set up for the purpose of representing police officers in all matters affecting their welfare and to carry out related negotiations. It comprises of three complementary organisations, Police Federation, the Police Superintendents' Association, and the Chief Police Officers' Staff Association, all of whom are represented on the Police Negotiation Board (PNB).

2. Police Pension Schemes relating to PSNI officers are consulted upon and agreed at a national level through the PNB. The Minister is bound by the Police (Northern Ireland) Act 1998 to take into account the recommendations of the PNB and also to consult with the PNB in the making of regulations which may emanate from any decision to change the police pension scheme.

3. A copy of the DFP Consultation on the Public Sector Pensions Bill was forwarded by the Department to each staff association in Northern Ireland on 15 January 2012.

4. On 20 February 2013, the PNB also informed members of this consultation and issued a cover letter from the Department of Justice in Northern Ireland inviting members to submit responses to the DFP consultation on proposals to reform public service pensions (including police pensions) in Northern Ireland.

5. The Police Federation for Northern Ireland (PFNI), in responding to DFP advised that;

*"The Police Federation for Northern Ireland is content to address our concerns within*

*the Police Negotiating Board (PNB) Pensions Group as has been the case for a number of years".*

6. On 9 July 2013, the Department introduced an agenda item at the PNB to address any concerns that any PNB member had on the Bill. At that meeting the PFNI representative advised that *"there were no concerns that the PFNI wished to raise"*.

7. No comments were received from the Chief Constable, the Northern Ireland Policing Board or other members of the Police Association on the consultation.

#### **Devolved Judicial office holders' proposed schemes**

8. Judicial office holders are not represented by a trade union, although they do have a representative association, the Judges' Council. The Department has only consulted the one judicial office holder with a pension for which it is currently responsible (the Lands Tribunal member). No issues were raised by this member.

#### **Schemes under the responsibility of the Department of Finance and Personnel**

9. The Department of Finance and Personnel established and co-ordinates a forum which is facilitating central consultation with the Trade Union Side on the core provisions of the Bill. The Forum is jointly chaired by DFP and the NIC-ICTU. The NIC-ICTU is providing collective employee representation for each of the public service employments which fall within the remit of the Bill.

10. The above forum provides an arena for engagement between Management Side of all public service pension schemes and a composite representation of Trade Union Sides for the purpose of information sharing and formal consultation on matters relating to the introduction of the Public Service Pensions Bill to the Assembly. The group facilitated collective consultation with the trade unions representing the public service workforce with regard to the consultation.

11. While a few respondents offered support for the proposals the vast majority of individual respondents submitted their views indicating their general disapproval and rejection of the overall policy for pension reforms. Several respondents expressed concern that Prison Officers, paramedics and ambulance workers are not included in the uniformed services category for protected pension ages. A core provision of The

Public Service Pensions Bill is a normal pension age of 60 (subject to regular review) for the police and fire and rescue services.

12. The reference to the uniformed service in the final report of the Independent Public Service Pension Commission (IPSPC), which was published in March 2011, related specifically to the Armed Forces, Police and Fire-fighters. The report did not recommend any concession from the central recommendation to link normal scheme pension age to state pension age for any other public service employments outside of the categories for Police Officers, Fire-fighters and the Armed Forces. Therefore, the proposed reforms are in keeping with the recommendations contained in the IPSPC report.

13. The Prison Service considers officer grades should maintain parity with other members of the PCSPS (NI) and that the proposed revised pension's arrangements should apply. No individual response was received from the POA as the NIC-ICTU provided collective representation for both affiliated and non affiliated trade unions representative of employees affected by the Bill, including the POA as detailed in Annex B, paragraph 9.

#### **Schemes under the responsibility of the Department of the Environment**

14. The Probation Board and the Northern Ireland Legal Services Commission are employing authorities in the Local Government Pension Scheme and as such will be affected by the Department of the Environment's proposals to introduce revised pension arrangements from 1 April 2014. The then Minister of the Environment asked the Local Government Pension Scheme Review Group (the Review Group) to consider and make recommendations to him on scheme design, governance and cost control arrangements to be introduced from 1 April 2014. The Review Group is chaired by a senior official from the Department of the Environment and comprises four employer representatives, four trade union representatives and two representatives from the administering authority (Northern Ireland Local Government Officers' Superannuation Committee). It did not prove possible to get agreement on a scheme design.

15. The Department of the Environment carried out a consultation on a proposed scheme design (from 11 April to 6 June 2013) which included a pension on a career average revalued earnings basis and a normal pension age of 65 or the individual's

State Pension Age, whichever is the higher. The Probation Board responded to that consultation. The comments made by the Probation Board and the other respondents are under consideration by the Department.



**Annex D**

**What issues has the Department or any of the individual criminal justice organisations raised regarding the proposed changes with:**

- the Minister of Finance and Personnel in relation to the Principal Civil Service Pension Scheme (Northern Ireland); or
- the Minister for the Environment in relation to the Local Government Pension Scheme (Northern Ireland), and what has been the response?

**Schemes under the responsibility of the Department of Finance and Personnel**

1. The Department of Finance and Personnel public consultation on the policy underpinning the Public Service Pensions Bill ended on 15 April 2013.
2. Views were sought from trade unions (including the Northern Ireland Public Service Alliance (NIPSA) and the Prison Officer's Association (POA)), individuals and other groups with a vested interest in any of the Public Service pension Schemes. No individual response was received from the Department of Justice or any of the individual criminal justice organisations.
3. The Department of Finance and Personnel published a formal response to the consultation on 20 May 2013. The document addressed issues raised in the course of the consultation and set out the Department's intention to proceed to introduce the Bill. The published document can be accessed through the following link: [www.dfpni.gov.uk/civilservicepensions-ni/index/latest-news/public\\_service\\_pensions\\_bill.htm](http://www.dfpni.gov.uk/civilservicepensions-ni/index/latest-news/public_service_pensions_bill.htm)

**Schemes under the responsibility of the Department of the Environment**

4. The Department of the Environment carried out a consultation on a proposed scheme design (from 11 April to 6 June 2013) which included a pension on a career average revalued earnings basis and a normal pension age of 65 or the individual's State Pension Age, whichever is the higher. The Probation Board responded to that consultation. The comments made by the Probation Board and the other respondents are under consideration by the Department.

## **Annex E**

**What consideration is the Minister of Justice giving to vary from the “parity principle” in relation to the pension schemes that he has policy and legislative responsibility for, and what are the proposals and cost implications?**

### **Schemes under the responsibility of the Department of Justice**

#### **Police pension schemes**

1. Police Pension Schemes relating to PSNI officers are consulted upon and agreed at a national level through the Police Negotiation Board (PNB). At its meeting of 6 October 2011, the Justice Committee agreed that it was content with the handling arrangements proposed by the Department of Justice in relation to the process for the negotiation at the PNB and implementation of changes to police terms and conditions through United Kingdom wide negotiation.

2. With regard to parity, the Minister of Justice is bound by the Police (Northern Ireland) Act 1998 to take into account the recommendations of the Police Negotiation Board (PNB) (whose membership includes official and Federation representatives from across the United Kingdom). The Minister has written to the Home Secretary advising that police pension policy remains to maintain parity of terms and conditions for police pensions between the Police Service of Northern Ireland (PSNI) and police forces in England, Wales and Scotland and that DOJ officials participation at the PNB in the detailed discussions on long term pension reform, will help to ensure the preservation of this uniformity. By maintaining parity it allows interoperability between forces and permits PSNI officers to gain experience in other police forces.

3. While the Minister has agreed in principle to introduce the Public Service Pensions (Northern Ireland) Bill with respect to pension schemes relating to all officers in the PSNI, proposals on the detail for a new police pension scheme continue to be consulted upon at the PNB. Indeed an extension of the transitional protected period for officers is a direct result of strong representations made during this consultation by the Police Federation for Northern Ireland.

4. The Minister remains committed to reaching a fair outcome on police pensions reform, to ensure that police officers have access to affordable and sustainable pensions in the future, which are amongst the best available.

5. Should the Minister wish to break parity it would require, in the first place, an amendment to the Police (Northern Ireland) Act 1998.

6. In terms of costs, should a separate police pension scheme operate here in Northern Ireland then a number of problems will ensue:

- the PSNI would lose interoperability between forces and the freedom of movement of skills between police forces. This is likely to affect mutual aid as it currently operates; and
- recruitment and advancement would be limited to those officers in the PSNI. With differing pension schemes, any officer wishing to gain expertise elsewhere in the United Kingdom would have to defer their PSNI pension until age 67 and start contributing to a new scheme. This is already the case for officers from an Garda Síochána and appears to be a factor in deterring movement between these two forces.

7. Given the existing police pension schemes, were the Minister to set up a separate Northern Ireland scheme for police officers then the risks would have to be borne by the Department of Justice alone. General estimates of this liability risk alone is over £2billion, excluding costs involved in creating a new scheme and any subsequent penalties from HM Treasury if the scheme is not implemented by 1 April 2015.

8. The potential cost of delaying implementation of the reformed scheme for Police Pension schemes has been estimated at £60m by the Government Actuary Department (GAD). As it stands the Justice Minister has advised that he would have to seek additional funding from the Assembly as this sum could not be found from within the Department's budget, without having a direct effect on frontline services.

9. In terms of cost to set up an individual pension scheme for PSNI officers, it should be considered whether it would be fair that these officers have either a better/worse pension scheme than their counterparts in Scotland or England and Wales. If better, given the budgetary constraints, questions would likely arise as to

whether the Minister of Finance and Personnel would consider providing extra resourcing to the Department of Justice for this purpose.

**Devolved Judicial office holders' proposed schemes**

10. The Minister intends to replicate for the devolved judiciary, as far as possible, the arrangements being made for non-devolved judicial office holders by the Lord Chancellor. The Committee may recall it noted in April 2013 that the Department proposed that reform of the judicial pensions for which it is responsible should be in line with the approach taken by the Lord Chancellor under the Public Service Pensions Act 2013.

**Schemes under the responsibility of the Department of Finance and Personnel**

11. The Minister of Justice has no policy or legislative responsibility for the Principal Civil Service Pensions Scheme (PCSPS) (Northern Ireland) which falls to the Department of Finance and Personnel.

**Schemes under the responsibility of the Department of the Environment**

12. The Minister of Justice has no policy or legislative responsibility for the Local Government Pensions Scheme (LGPS) (Northern Ireland) which falls to the Department of Environment.

## Annex F

**What issues has the PSNI raised with the Minister of Justice regarding the proposed changes and what is his response?**

### **Schemes under the responsibility of the Department of Justice**

#### **Police pension schemes**

1. Although no issues have been raised by the PSNI as an organisation, one PSNI officer has raised the issue of transitional arrangements and protected periods with the Minister. In response, the Minister advised that his objective remains to protect those officers within 10 years of normal pension age (as of 1 April 2012) so that they see neither a change in when they can retire nor any decrease in the amount they receive at their normal pension age.
2. In the context of this commitment and the special circumstances of members of the 1988 Police Pension scheme, it is proposed that transitional protection will be extended to officers who, at 1 April 2012, are aged 45 years or over or who are aged 40 and over, and who are 10 years or less away from being able to retire on a maximum unreduced pension.
3. The New Police Pensions Scheme 2006 has an explicit pension age of 55, therefore for this scheme the protection will apply to members aged 45 or over. Also, by recognising expectations of double accrual for members of the 1988 scheme who will move to the proposed new career average scheme, it is planned to offer a generous proposition whereby an officer's full service on retirement will be used to calculate the average accrual rate applied to their service up to 2015 in the 1988 scheme.
4. While proposals on the detail for a new career average pension scheme continue to be consulted upon at the PNB, the Police Federation for Northern Ireland successfully sought and achieved an extension of the transitional protected period for police officers.
5. No issues have been raised by the PSNI regarding the PSNI civilian staff.

## **Annex G**

**Details of the secondary legislation that will be the responsibility of the Department of Justice, the timetable for the secondary legislation and the procedure for each statutory rule i.e. negative resolution, affirmative resolution etc.**

### **Schemes under the responsibility of the Department of Justice**

#### **Police pension schemes**

1. Subject to a 'heads of agreement' on the proposed new police pension scheme at the PNB and subsequent Ministerial approval, it is anticipated that draft Police Pension (Northern Ireland) Regulations (negative resolution) will be brought before the Justice Committee in 2014. This timing is dependant upon the Public Service Pensions Bill reaching its final stage in the Assembly.

#### **Devolved Judicial office holders' proposed schemes**

2. The timetable for the draft regulations for the devolved judicial office holders' pension scheme is likely to be similar to that for the police pension schemes, however, the judicial pension scheme regulations are subject to the affirmative procedure unless the pension board for the scheme has stated that it considers the regulations to be minor or wholly beneficial. All scheme regulations require the consent of DFP before being made.

### **Schemes under the responsibility of the Department of Finance and Personnel and the Department of the Environment**

3. Any relevant legislation required for the organisations within these Schemes will be brought forward by the appropriate Department.

**Annex H****The overall impact of the proposed pension changes for the Department of Justice budget.****Schemes under the responsibility of the Department of Justice****Police pension schemes**

1. Currently there are two police pension schemes. If the Minister was to set up a separate Northern Ireland scheme for the police then the risks would have to be borne by the Department of Justice. General estimates of the risk are in excess of £2billion, excluding the time and cost associated with doing so.
2. The potential cost of delaying implementation of the reformed scheme for Police Pension schemes has been identified as £60m. The Justice Minister has advised that he would have to seek additional funding from the Assembly as this sum could not be found from within the Department's budget, without having a direct effect on frontline services.
3. Consideration would also have to be given to those who are members of the two existing police schemes and as to whether Treasury would be prepared to honour those agreements made at the Police Negotiating Board with regard to transitional protections and if not how these additional costs would be covered within the Northern Ireland budget.

**Devolved Judicial office holders' proposed schemes**

4. The precise extent of the costs of setting up and running the reformed pension arrangements for the devolved judicial office holders has not been quantified, however it will be shared with DEL and DSD. Further work is to be carried out to provide greater clarity on the likely costs, including any increased provision which may be required for part-time, fee paid devolved judicial officers, following the *O'Brien* litigation, mentioned in Annex I, concerning the entitlements of fee paid judiciary.

**Schemes under the responsibility of the Department of Finance and Personnel**

5. It will be for the Department of Finance and Personnel to provide cost implications which may come about as a result of any changes to the Principal Civil Service Pension Scheme (Northern Ireland) for which it has policy and legislative responsibility.

**Schemes under the responsibility of the Department of the Environment**

6. It will be for the Department of Environment to provide cost implications which may come about as a result of any changes to the Local Government Pension Scheme (Northern Ireland) for which it has policy and legislative responsibility.



## Annex I

Clause 1 provides new provisions to enable the Department of Justice in future to make pension schemes for holders of devolved judicial offices and Clause 35 makes financial provision for such an eventuality:

- who currently has responsibility for this;
- on what basis was it decided that the Department of Justice should assume responsibility for this;
- what are the benefits of changing the arrangements;
- what implications does it have for the Department of Justice; and
- what costs are associated with this change?

### Schemes under the responsibility of the Department of Justice

#### Devolved Judicial officer proposed schemes

1. The Department is currently statutorily responsible for the pension arrangements for one such judicial office holder, the Lands Tribunal member. DEL is statutorily responsible for the judicial office holders in the Industrial and Fair Tribunals, whilst DSD has statutory responsibility for those in the Appeals Tribunal. The pensions are currently maintained by the Ministry of Justice. The number of office holders entitled to a pension is likely to increase following the decision in *O'Brien (Appellant) v Ministry of Justice (Formerly the Department of Constitutional Affairs) (Respondent)* [2013] UKSC 6 and associated litigation in this jurisdiction. Members may recall that these actions relate to the pension and other entitlements of fee-paid judicial office holders.

2. As the Committee may also recall, the Department plans to assume responsibility for the Industrial, Fair and Appeals Tribunals. Given this expected transfer of responsibility and the intention to create one judicial pension scheme, with the consent of the First and deputy First Minister, the Department is to be the responsible authority for the reformed pension scheme for the devolved judiciary.

3. One of the benefits of one responsible authority for all devolved judicial office holders is a more streamlined approach, especially when it is intended that there would only be one scheme for these office holders.

4. The likely implications for the Department of being the responsible authority include making the scheme regulations, establishing and sponsoring a pensions board and procuring and managing a pensions provider. The precise costs of setting up and running the reformed pension arrangements are not currently quantified but they will be shared with DEL and DSD. Further work is to be carried out to provide greater clarity on the likely costs, including any increased provision which may be required for fee paid devolved judicial officers following the *O'Brien* litigation.



**NORTHERN IRELAND  
ASSEMBLY**

**COMMITTEE FOR JUSTICE**

Barbara McAtamney  
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BT4 3SQ

1 August 2013

Dear Barbara

**Public Service Pensions Bill**

At its meeting on 4 July 2013 the Committee for Justice noted that the Public Service Pensions Bill, which is a framework piece of legislation to enable the implementation of public service pension reforms as agreed by the Executive in March 2012, is at Committee Stage. Given that the Bill will have implications for a wide range of public sector pension schemes including schemes that fall within the responsibility of the Minister of Justice and schemes that will affect employees in both the Department of Justice and its agencies and NDPB's, a list of which is attached, the Committee for Finance and Personnel will be seeking the views of the Justice Committee in September.

To assist consideration of the Bill the Committee agreed to request the following information:

- The likely implications for the Department of Justice and each of the Criminal Justice organisations that will be affected by the proposed changes.
- What consultation the Department of Justice or any of the individual criminal justice organisations has undertaken regarding the proposed changes and what key issues have emerged?
- What consultation the Department of Justice or individual criminal justice organisations has undertaken with the relevant trade unions and in particular

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the prison service and police service unions and what key issues have they highlighted?

- What issues has the Department or any of the individual criminal justice organisations raised regarding the proposed changes with the Minister of Finance and Personnel in relation to the Principal Civil Service Pension Scheme (Northern Ireland) or the Minister for the Environment in relation to the Local Government Pension Scheme (Northern Ireland) and what has been the response?
- What consideration is the Minister of Justice giving to vary from the “parity principle” in relation to the pension schemes that he has policy and legislative responsibility for and what are the proposals and cost implications?
- What issues has the PSNI raised with the Minister of Justice regarding the proposed changes and what is his response?
- Details of the secondary legislation that will be the responsibility of the Department of Justice, the timetable for the secondary legislation and the procedure for each statutory rule i.e. negative resolution, affirmative resolution etc.
- The overall impact of the proposed pension changes for the Department of Justice budget.
- Clause 1 provides new provisions to enable the Department of Justice in future to make pension schemes for holders of devolved judicial offices and Clause 35 makes financial provision for such an eventuality – who currently has responsibility for this, on what basis was it decided that the Department of Justice should assume responsibility for this, what are the benefits of changing the arrangements, what implications does it have for the Department of Justice and what costs are associated with this change?

I would appreciate a response by 6 September 2013.

Yours sincerely

*Christine Darrah*

**Christine Darrah**  
**Clerk, Committee for Justice**

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## **Relevant Pension Schemes**

### Principal Civil Service Pension Scheme (Northern Ireland) – Responsibility of the Minister of Finance and Personnel

- Police Complaints Board for Northern Ireland (the Police Complaints Board for NI ceased to exist in 1987 when it was replaced by the Independent Commission for Police Complaints for Northern Ireland - the Police (Northern Ireland) Order 1987 refers).
- Employment in the Northern Ireland Judicial Appointments Commission
- Employment by the Police Service of Northern Ireland as a civilian direct recruit
- Civil servants in the Department of Justice
- Chief Inspector of Criminal Justice Northern Ireland
- Employment by the Chief Inspector of Criminal Justice Northern Ireland
- Police Ombudsman for Northern Ireland
- Employment by the Police Ombudsman for Northern Ireland
- NI Judicial Appointments Commission
- NI Law Commission
- Employment by the NI Prison Service

### Local Government Pension Scheme (Northern Ireland) – Responsibility of the Minister for the Environment

- Probation Board Northern Ireland
- Northern Ireland Legal Services Commission

### Police Pension Scheme and New Police Pension Scheme – Responsibility of the Minister of Justice

- Police Service of Northern Ireland

## Further submission from NASUWT — 14.10.2013

### **Northern Ireland Assembly – CFP Evidence, 9<sup>th</sup> October 2013**

DW

This presentation will be split into separate sections – I will elaborate on the NASUWT submissions to the Committee for Finance and Personnel, focusing on the key points and also explaining the purpose of the amendments which the NASUWT is asking the Committee to consider.

I will also respond to the Departmental response to the Submissions which the trade unions have made to the Committee, which I will begin with. I will make the point that in its supplementary submission to the Committee, the NASUWT has identified amendments which it wishes to see made to the Bill, which will protect Northern Ireland teachers' pensions when the reformed teachers' pension scheme comes into operation, will improve the governance of the teachers' pension scheme and other public service schemes and will establish higher standards of democracy and accountability, through the Northern Ireland Assembly and the greater involvement of trade unions representing scheme members, than is currently the case in the Bill.

**Letter from Judith Finlay to Shane McAteer (Committee Clerk), page 2 – Scheme specific trade unions.**

NASUWT comments are not scheme specific, but relate to the overarching legislation in the Public Service Pensions Bill. In fact, very few NASUWT comments are specific to the Northern Ireland Teachers' Pension Scheme only. Features such as the equalisation of the NITPS normal pension age and the state pension age; the process of annual revaluation of earnings under CARE; the DFP Directions and valuation process and scheme governance through the Pension Board and the Scheme Advisory Board are all on the face of the Bill and will become legislation if the Bill is passed. These features cannot be negotiated away through scheme specific discussions.

### **NIPSA letter re. GAD costings**

I am sure that NIPSA will wish to pick this up, but this is an utterly bizarre comment – that the method of calculating the amount by which the Block Grant will be reduced in the event of failure to progress pensions reform is irrelevant and no response will be given to a request to outline the method. The NASUWT suggests that this is precisely the role of the Assembly and the Committee for Finance and Personnel – to ensure that the people of Northern Ireland, including public service workers, are not the victim of 'back of a fag packet' calculations by GAD. The exact nature of the final calculated figure should not cloud the appalling nature of the pressure which the Treasury is bringing to bear on the people of Northern Ireland through its threat to reduce the Block Grant. In addition, GAD quotes the phrase 'spurious accuracy'

in respect of its deduction from the Block Grant figure. The NASUWT makes it clear that we see GAD's figure as spurious, as it is provided without justification and cannot therefore be subject to analysis.

In the same way, the NASUWT regards the macro-economic arguments against the increase in the pension age of public service workers as amongst the most powerful. Because of the high proportion of public service workers in Northern Ireland, which is incomparable with England, Wales and Scotland, the increase in the pension age could deepen the recession in Northern Ireland, keeping unemployment high for far longer than would otherwise be the case. The scandal of graduate teacher unemployment, far higher than in England, Wales and Scotland, would continue. The NASUWT considers that the Committee Stage should be further extended, if necessary, to ensure that committees have an opportunity to scrutinise thoroughly the response from the Strategic Policy division, DFP, to the Nevin Economic Research Unit paper.

Clause 3(5) – it is not sufficient for the DFP to simply give consent. The NASUWT does not accept that it is sufficiently democratic and accountable for the DFP and relevant departments to fulfil such a decision-making role. This should lie with the Assembly.

One of the NASUWT's biggest concerns is over scheme governance. The participation of scheme member



representatives in Pension Boards and Scheme Advisory Boards should not be left to the vagaries of scheme specific discussions, or be in the gift of successive ministers of education. Good governance should be provided for in the overarching legislation. These boards will have a crucial role in determining the future of public service pensions should the cost cap ever be breached.

The NASUWT cannot accept that it is in the interests of scheme members for defined contribution schemes to continue to be an option. In the departmental response to Clause 8(1), the Department for Finance and Personnel states that it will limit options to close down this option. The NASUWT is clear that these are detrimental options, which would deteriorate public service pensions. The NASUWT seeks protection for scheme members by removing the possibility of these options being pursued. This is also the case for Clause 11(5). The NASUWT would accept that there is no current intention to provide defined benefit schemes – however, the legislation allows for scheme design to be varied to provide these in the future and the NASUWT seeks additional protections to ensure that this deterioration does not occur.

Linked to this is our concern about the Department's response to ICTU over Clause 21(1) of the Bill. This is at the heart of the NASUWT's disagreement with the lack of protection the Bill affords to public service workers about future detrimental changes. In the view of The NASUWT 'the

negative resolution procedure in the Assembly does not afford an appropriate level of Government scrutiny to ensure the proper consultation on scheme level changes has been completed'. There should always be a debate and vote in the Assembly over further changes to public service workers' pensions – if the Assembly does not see this as its democratic role, we consider that public service workers in Northern Ireland, including teachers, are badly let down by the democratic process. **The NASUWT strongly supports the Equality and Human Rights Commission's concerns about those aspects of the Bill which permit retrospective application.**

Again, the NASUWT finds the departmental response to Clause 8(5), stating that 'expanding the permitted range of scheme designs by regulations has no direct effect on what pensions are actually provided' to be bizarre – this would clearly have a direct effect, for example by worsening the accrual rate.

One of most significant issues in the Bill is the equalisation of the teachers' normal pension age and the state pension age. The NASUWT is supportive of the aspirations of the FBU and the other uniformed services for a normal pension age of under 60 for those services, but that makes a normal pension age of up to 68 for teachers even more unacceptable. One of our younger members said recently to me that she did not want to die at her desk – and the ever increasing teachers' pension age would be harmful not just to Northern Ireland

teachers but also to the Education Service of Northern Ireland. My colleague who is a serving Northern Ireland teacher will explain the implications of this to you in greater detail.

The NASUWT accepts that consultation on the initial valuations for the reformed public service schemes will not be with the Pension Boards and Scheme Advisory Boards, because they will not have been brought into existence. However, consultation should be with all unions, including the NASUWT. The valuation process involves several specific aspects – DFP Directions, DFP regulations and scheme specific assumptions on teacher mortality and behaviour. The NASUWT considers that the DFP Directions and DFP regulations should be subject to consultation with all trade unions, including the NASUWT. The scheme specific assumptions should be subject to consultation with relevant scheme unions – in the case of the NITPS, the teacher unions.

Likewise, with the finalisation of the Directions: Given that the DFP Directions will determine the cost cap and the employer contribution rate for the NITPS, the NASUWT should be consulted, alongside individual teacher unions, about the Directions. The Treasury has consulted all unions over the Directions in England, Wales and Scotland and we expect the DFP to do likewise. The Directions have a crucial role in setting the employer cost cap and the future of teachers' pensions and the finalised Directions should be

subject to a process of consultation with all unions which represent public service scheme members.

In order to enable Fair Deal to protect the pensions of public service workers who are outsourced, it should be entered onto the face of the Bill and should not be simply DFP or Departmental Guidance.

The new HMT Fair Deal Policy for England excludes workers in HE and FE and includes a series of caveats and loopholes to allow outsourced employers to offer broadly comparable pension schemes or even to pay compensation as an alternative to the provision of a pension scheme. This is because it is Treasury Policy and Guidance, rather than an entitlement for public service workers.

The NASUWT's proposed amendments address all the above issues. They are, with one exception, amendments which would not permit the Treasury to implement its threat to reduce the Block Grant with any meaningful justification by GAD, with one exception – the amendment of the clause equalising the teachers' pension age with the state pension age. This is crucial to our members' well-being and the education service in Northern Ireland.

We are also able to explain the actual losses which teachers would suffer in Northern Ireland, from current pensions reform. This involves a projection into the future for teachers

with different career histories, looking at the impact of scheme reform for each of those teachers.

| <b>Issue</b>                        | <b>Proposed Final Agreement in TPS (E &amp; W)</b>                                                                                                                   | <b>Teachers Side Suggested Variations</b> | <b>Suggested Balancing Measures</b> |
|-------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------|-------------------------------------|
| DB Structure                        | Career Average Revalued Earnings                                                                                                                                     | None Available                            | None Available                      |
| Accrual rate                        | 1/57th                                                                                                                                                               |                                           |                                     |
| Revaluation rate for active members | CPI+1.6%                                                                                                                                                             |                                           |                                     |
| Revaluation for deferred members    | CPI                                                                                                                                                                  |                                           |                                     |
| Indexation of pensions in payment   | CPI                                                                                                                                                                  | None Available                            | None Available                      |
| Normal Pension Age                  | State Pension Age                                                                                                                                                    | None Available                            | None Available                      |
| Member contribution rates           | Average member contributions of 9.6%, with some protection for the lowest paid (subject to the detailed arrangements for determining future contribution structure). | None Available                            |                                     |
| Lump sums                           | Through optional commutation at 12:1 to HMRC maximum                                                                                                                 |                                           |                                     |
| Spouses/partner pension             | in accordance with current provisions                                                                                                                                |                                           |                                     |
| Lump sum on death in service.       | 3 times FTE salary                                                                                                                                                   |                                           |                                     |

|                           |                                                                                                                                                                                                                             |  |  |
|---------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|--|
| Ill-health benefits       | The same as those in the current open scheme                                                                                                                                                                                |  |  |
| Early and late retirement | Cost neutral basis except for those with a NPA above age 65 who will have early retirement factors of 3% per year for a maximum of 3 years in respect of the period from age 65 to their NPA                                |  |  |
| Abatement                 | Will not apply to service in the reformed NITPS. Abatement rules for the current scheme will remain unchanged                                                                                                               |  |  |
| Phased retirement         | arrangements which reflect those in the current scheme, with the additional option of a third drawdown of benefits after a member's 60th birthday                                                                           |  |  |
| Accrued rights            | Fully protected, with final salary link for service before the introduction of new scheme.                                                                                                                                  |  |  |
| State date                | April 2015                                                                                                                                                                                                                  |  |  |
| Transition                | Members who, as of 1 April 2012, have 10 years or less to their current pension age will see no change in when they can retire, nor any decrease in the amount of pension they receive at their current Normal Pension Age. |  |  |

|            |                                                                                                                                                                                                                                                                                                                                                                                            |  |  |
|------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|--|
| Transition | Members who are within a further 3.5 years of their Normal Pension Age, i.e. up to 13.5 years from their NPA will have limited protection with linear tapering so that for every month of age that they are beyond 10 years of their normal pension age, they lose 2 months of protection. At the end of the protected period, they will be transferred into the new pension arrangements. |  |  |
| Rejoiners  | Rejoiners within 5 years can link new and previous service as if they had always been an active member                                                                                                                                                                                                                                                                                     |  |  |
| Transfers  | The public sector transfer club will continue, and consideration will be given to the best method of operation in the reformed schemes.                                                                                                                                                                                                                                                    |  |  |
| Costs      | An employer cost cap to provide backstop protection to the taxpayer against unforeseen costs and risks                                                                                                                                                                                                                                                                                     |  |  |
| Other      | Flexibilities to allow members to elect to pay a higher contribution rate in return for a higher accrual rate for a particular year, at full member cost, within existing limits on additional pension                                                                                                                                                                                     |  |  |
| Other      | Members who in the new scheme have a normal pension age higher than 65 will have                                                                                                                                                                                                                                                                                                           |  |  |



|  |                                                                                                                                                                                                                                                                                                                                                                                                                                       |  |  |
|--|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|--|
|  | <p>an option in the new scheme to pay additional contributions to reduce or, in some cases, remove any early retirement reduction that would apply, if they retire before their normal pension age. Only reductions that would apply in respect of years after age 65 can be bought out and the maximum reduction that can be bought out is for 3 years (that would apply to a member with a Normal Pension Age of 68 or higher).</p> |  |  |
|--|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|--|



HM Treasury

# Fair Deal for staff pensions:

staff transfer from central  
government

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October 2013



HM Treasury

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October 2013

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# 1

## Fair Deal for Staff Pensions: staff transfers from Central Government

### Introduction and background

**1.1** This paper sets out the revised Fair Deal guidance. The Fair Deal is a non-statutory policy setting out how pensions issues are to be dealt with when staff are compulsorily transferred from the public sector to independent providers delivering public services. This paper sets out the standard practice which the Government will follow when its own staff are compulsorily transferred to non-public sector employers.<sup>1</sup>

**1.2** The policy is needed because the Transfer of Undertakings (Protection of Employment) Regulations 2006 ('TUPE') do not apply to occupational pensions.<sup>2</sup> The objectives of the policy are to provide an appropriate level of protection to public sector employees' pension provision when the services they deliver are outsourced, while delivering value for money for the taxpayer and removing barriers to plurality of service provision.

**1.3** The Fair Deal policy was introduced in 1999. "Staff Transfers from Central Government: A Fair Deal for Staff Pensions" was published by the Treasury in June 1999.<sup>3</sup> The Treasury issued a further guidance note "Fair Deal for Staff Pensions: Procurement of Bulk Transfer Agreements and Related Issues" in June 2004.<sup>4</sup> The approach taken was that where staff were compulsorily transferred from the public sector, their new employer was to give them access to an occupational pension scheme which was broadly comparable to the public service pension scheme they were leaving.<sup>5</sup> Staff were also to be offered the choice of becoming a deferred member of the scheme they were leaving or transferring their accrued benefits to the new scheme, by way of a bulk transfer agreement. Staff who were compulsorily transferred from the public sector were also to have the same protections on subsequent compulsory transfers.

**1.4** The interim report of the Independent Public Service Pensions Commission found that the provision of final salary pension schemes in the public sector, combined with the requirements of the Fair Deal, were a barrier to plurality of public service provision.

**1.5** The Government announced on 4 July 2012 that the Fair Deal was to be reformed.<sup>6</sup> In future staff who are compulsorily transferred from the public sector will be offered continued access to a public service pension scheme rather than being offered a broadly comparable private pension scheme. In broad terms, all staff whose employment is compulsorily transferred from the public sector under TUPE, including subsequent TUPE transfers, to independent providers of public services will retain access to their current employer's pension arrangements.

<sup>1</sup> Staff transfers within the public sector are outside of the scope of this guidance – such transfers are matter for the Cabinet Office Statement of Practice on Staff Transfers within the public sector ([http://resources.civilservice.gov.uk/wp-content/uploads/2011/09/stafftransfers2\\_tcm6-2428.pdf](http://resources.civilservice.gov.uk/wp-content/uploads/2011/09/stafftransfers2_tcm6-2428.pdf)).

<sup>2</sup> SJ 2006/246, see regulation 10.

<sup>3</sup> [www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/81339/staff\\_transfers\\_145.pdf](http://www.gov.uk/government/uploads/system/uploads/attachment_data/file/81339/staff_transfers_145.pdf).

<sup>4</sup> [www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/81340/pensions\\_bta\\_guidance\\_290604.pdf](http://www.gov.uk/government/uploads/system/uploads/attachment_data/file/81340/pensions_bta_guidance_290604.pdf).

<sup>5</sup> On broad comparability under the old Fair Deal see especially paragraph 14 of the 1999 guidance (and the Statement of Practice by the Government Actuary dated 26 May 1999 which was annexed to that guidance).

<sup>6</sup> Hansard, Commons Debates, 4 July 2012, Column 53WS, Written Ministerial Statements, Public Service Pensions.

**1.6** This new guidance comes into effect immediately and should be reflected in procurement practice as soon as is practicable without disruption to projects which are already at an advanced stage. However the earlier guidance remains in force and applies in the circumstances outlined below.<sup>7</sup>

**1.7** This guidance applies directly to central government departments, agencies, the NHS, maintained schools<sup>8</sup> (including academies) and any other parts of the public sector under the control of Government ministers where staff are eligible to be members of a public service pension scheme.<sup>9</sup> It does not apply to best value authorities (listed in section 1 of the Local Government Act 1999) but alternative arrangements exist in respect of those bodies. The Local Government Act 2003 enables the Secretary of State to issue directions to best value authorities in England and Wales concerning how pension matters will be dealt with in the contracting out of services. In 2007 the Best Value Authorities Staff Transfers (Pensions) Direction 2007 was issued to best value authorities in England and Welsh fire authorities.<sup>10</sup> The Department for Communities and Local Government (DCLG) will consider what is needed in respect of directions or other arrangements to achieve the principles of new Fair Deal in local government.

## Compulsory transfers from the public sector

**1.8** The new policy applies when staff who are members of a public service pension scheme move from the public sector to an independent contractor by way of a transfer to which TUPE applies, and when staff who are members of a public service pension scheme move by way of a non-voluntary transfer to a public service mutual or to other new models of public service delivery<sup>11</sup> (regardless of whether or not TUPE applies). Such staff should continue to be members of the public service pension scheme they were in immediately prior to the transfer, subject to the eligibility criteria of the relevant scheme. Transferred staff will continue to be eligible to be members of the public service pension scheme and they should also continue to be eligible to be members of the public service pension scheme following any subsequent compulsory transfer. (The new policy with respect to staff who were eligible to be a member of a public service pension scheme prior to the transfer but were not in fact a member is that they should continue to be able to be a member after the transfer.)

**1.9** Staff who are members of a public service pension scheme and who are compulsorily transferred out of the public sector, and who remain continuously employed on the delivery of the outsourced service or function, will remain eligible to be members of their public service pension scheme. The Fair Deal policy does not apply to other staff of the independent contractor, including any staff employed to deliver the outsourced service or function who were not compulsorily transferred from the public sector. Any proposals to allow these staff access to a public service pension scheme are out of the scope of this guidance.

**1.10** Contracting authorities should ensure that when staff who were (eligible to be) members of a public service pension scheme are compulsorily transferred from the public sector to an independent contractor, the contractor provides them with access to the appropriate public service pension scheme in their new employment while they continue to be employed on the transferred service or function. The contract for the transferred service or function should specifically require the independent contractor to provide transferred staff with continued access

<sup>7</sup> Paragraphs 46 and 47 of the 2004 guidance note are no longer relevant.

<sup>8</sup> Except and to the extent that a direction issued under sections 101 and 102 of the Local Government Act 2003, or other arrangements put in place to meet the principles of this guidance, apply to a school which is maintained by a best value authority.

<sup>9</sup> "Public service pension scheme" has the same meaning in this guidance as in section 1(1) of the Pension Schemes Act 1993.

<sup>10</sup> Other public sector bodies participating in the Local Government Pension Scheme may however be subject to this guidance.

<sup>11</sup> See Open Public Services White Paper (CM 88145): <http://files.openpublicservices.cabinetoffice.gov.uk/OpenPublicServices-WhitePaper.pdf>.

to the relevant public service pension scheme while they remain employed on the public service contract.

**1.11** The contracting authority should also ensure that the contracts of employment of staff who are compulsorily transferred to an independent contractor as a result of an outsourcing of a service or function provide that they have a right to continued membership of their public service pension scheme. These rights will therefore ultimately be enforceable by staff, although contracting authorities have a responsibility to ensure that independent contractors comply with those of their contractual responsibilities which give effect to the Fair Deal policy, as outlined below. Independent contractors, as scheme employers in the public service pension schemes, will also be subject to requirements of the scheme regulations and the jurisdiction of the Pensions Regulator and Pensions Ombudsman.

**1.12** Contracting authorities should also ensure that staff who have been compulsorily transferred from the public sector under this policy are provided with continued access to the relevant public service pension scheme on any subsequent compulsory transfer, while they continue to be employed on the contracted-out service or function, including any transfer to a sub-contractor. Any subsequent contract for the transferred service or function should specifically deal with this requirement. The contracting authority should also ensure that the contracts of employment of staff who are compulsorily transferred in second or subsequent generation transfers continue to provide that they have a right to continued membership of their public service pension scheme, a right which will be enforceable against the new employer.

**1.13** Contracting authorities that plan to award a contract which will involve the compulsory transfer of staff to which this guidance will apply should make that clear at an early stage in the procurement process. Pension issues should be dealt with as an integral part of the overall procurement exercise, and contracting authorities should make clear at an early stage what the pension protection must be, in both first generation exercises and subsequent generation exercises to appoint a successor contractor. Contracting authorities may also wish to confirm at an early stage in the procurement process that prospective bidders are willing to comply with the regulations that govern the scheme. The contracting authority should also notify the authority responsible for the relevant public service pension scheme at an early stage in the process that existing members may be being transferred to a new employer who will need to participate in the scheme.

**1.14** A Participation Agreement between the independent contractor and the relevant public service pension scheme will be required for each public service contract requiring an independent contractor to participate in that scheme, unless the independent contractor's contract with the contracting authority and scheme regulations impose equivalent obligations upon the contractor, and the responsible authority agrees to this approach. The contracting authority should ensure that the contract for the transferred service or function specifically requires the contractor to comply with the Participation Agreement. The contractor must agree the Participation Agreement with the responsible authority for the scheme during the procurement process, before the transfer of staff takes place.

**1.15** The contracting authority should ensure that there are effective mechanisms in the contract for the transferred service or function to ensure that a contractor complies with the Participation Agreement. Should a contractor breach any of the requirements of the Participation Agreement, the contracting authority should seek to ensure that the contractor complies with them.

**1.16** The contracting authority may wish to enter an agreement with the responsible authority for the relevant public service pension scheme, requiring the scheme to notify the contracting authority if the independent contractor fails to comply with any of the requirements for their



participation in the scheme e.g. by failing to pay the necessary employer or employee contributions.

**1.17** The contracting authority should ensure that the contract for the transferred service or function expressly provides that breach of the Participation Agreement entitles the contracting authority to terminate the contract.

**1.18** The contracting authority (or the ceding employer if this is not the contracting authority) should provide the scheme manager with the names of the individuals transferring to the new employer who will retain (eligibility for) membership of the scheme in accordance with this guidance as soon as the list of transferring employees is finalised.

**1.19** There may be exceptional circumstances where there are special reasons which mean that it would not be appropriate to provide continued access to a public service pension scheme to staff who are compulsorily transferred from the public sector. The strength of those reasons should be tested rigorously by the contracting authority. No decision should be taken not to provide continued access to a public service pension scheme to staff who are to be compulsorily transferred from the public sector unless any recognised trade union or, in the absence of such a body, the staff, have been consulted with a view to reaching agreement with them. If staff are compulsorily transferred from the public sector without being given continued access to a public service pension scheme, it would then be necessary to comply with the old Fair Deal policy (i.e. the 1999 and 2004 Guidance referred to in paragraph 1.3 above) and ensure that staff were provided with a broadly comparable pension scheme. In all cases the preference should be for the new employer to offer transferring staff access to a public service pension scheme and only in exceptional circumstances membership of a broadly comparable scheme as an alternative. In the event that it was not appropriate to offer either access to a public service pension scheme or a broadly comparable pension scheme under the old Fair Deal policy the contracting authority would need to consider whether compensation should be offered to transferring staff, in consultation with staff or staff representatives. Actuarial advice would need to be taken by the contracting authority on the calculation of any compensation in these exceptional circumstances. Only in exceptional cases should members of staff to whom this guidance applies not remain members of their public service pension scheme.

**1.20** This new guidance should be followed where possible with immediate effect. The necessary changes to public service pension schemes will be made as soon as practicable. In some of the public service pension schemes the new arrangements will start immediately. In others, this will not be possible until the necessary changes to the scheme regulations and administrative procedures have taken place to allow transferred staff to participate in the scheme. The previous Fair Deal policy will continue to apply to transfers that take place before the relevant pension scheme has made the necessary changes to permit continued access. That is, where staff cannot be offered continued access to the relevant public service pension scheme they should be provided with a broadly comparable pension scheme and the option of bulk transfer arrangements when their employment is transferred, in accordance with the earlier guidance referred to above. The policy outlined below will apply in any subsequent retender. The new guidance set out in this paper must be followed in all cases from April 2015.

**1.21** As noted, the new guidance set out in this paper should be reflected in procurement practice as soon as is practicable. However, where a procurement is already at an advanced stage, the contracting authority should consider whether it would be legitimate and desirable to adjust the terms of the procurement to take account of this new guidance. There is no requirement for an advanced procurement to be terminated or delayed in order to apply this new guidance. Where it is not practicable to apply this new policy, the previous policy, as set out in the previous Fair Deal guidance referred to above, should continue to be followed. That

is, in this situation transferring staff should be offered a broadly comparable pension scheme and the option of bulk transfer arrangements when their employment is transferred, in accordance with the earlier guidance. The policy outlined in the next section will apply in any subsequent retender.

**1.22** As noted, this guidance sets out the standard practice which the Government will follow when its own staff are compulsorily transferred to non-public sector employers. It is of course open to contracting authorities in other parts of the public sector to adopt approaches comparable to those set out here. It is also open to private sector bodies whose members participate in a public service pension scheme to seek to adopt a comparable approach, subject to the independent contractor to whom staff are being compulsorily transferred meeting the relevant requirements to participate in the scheme.

## **Retenders of contracts involving staff who were transferred out of the public sector under the old Fair Deal guidance**

**1.23** The previous section outlined the policy regarding staff who are compulsorily transferred out of the public sector after this guidance comes into effect. There are, however, many staff who have already been transferred out of the public sector and to whom the old Fair Deal (i.e. the 1999 and 2004 Guidance referred to in paragraph 1.3 above) still applies. The guidance in this section applies to retenders of contracts involving compulsory transfers of staff who were transferred out of the public sector under the old Fair Deal.

**1.24** Various approaches to pensions were taken where staff were compulsorily transferred from the public sector prior to the introduction of Fair Deal in 1999. Where a contract involving such staff is retendered in future the contracting authority should consider, on a case by case basis, whether the approach taken was equivalent with the old Fair Deal. In cases where the approach was equivalent, the contracting authority should, where this is compatible with the original contract, and the authority responsible for the pension scheme agrees, follow this guidance.

**1.25** When a contract involving the compulsory transfer of employees already transferred out under the old Fair Deal is retendered, contracting authorities should (where this is compatible with their obligations under the Public Contracts Regulations 2006) require bidders to provide them with access to the appropriate public service scheme. The successful bidder should provide the relevant staff with access to the appropriate public service pension scheme in their new employment, while they continue to be employed on the contracted service or function. The appropriate scheme will normally be the scheme that staff would be in, had they remained in the public sector and not been transferred out.<sup>12</sup> For the purpose of the broad comparability assessment, the benefits in the relevant scheme are ordinarily those applicable at the date on which the new contract commences (see paragraph A.8 of Annex A). The new contract for the service or function should specifically require the independent contractor to provide transferred staff with access to the relevant public service pension scheme while they remain employed on the public service contract. The contracting authority should also comply with paragraphs 1.14 to 1.18 of this guidance.

**1.26** If the contracting authority, in the particular circumstances of a specific retender, would be unable to comply with their obligations under procurement law to treat economic operators equally if they were to require the incumbent to provide access to a public service pension

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<sup>12</sup> Where a public service scheme has been closed to future accrual and the staff would have been members of a new or an alternative public service pension scheme had they not been transferred to a new employer, transferred staff will instead be eligible to be members of that new or alternative scheme. Transferred staff will, however, be able to rejoin a scheme that is closed to new members if they would have remained in that scheme had they not been transferred out of the public sector. Transferred staff will also be subject to any future changes to the public service pension schemes to which they are admitted, in the same way as other members of the scheme are, including the introduction of new schemes from 1 April 2015 (1 April 2014 in the case of the Local Government Pension Scheme).

scheme, the incumbent should have the option of providing either access to a public service pension scheme or to a broadly comparable pension scheme. The contracting authority must ensure that the incumbent employer informs any recognised trades unions or, in the absence of such bodies, the staff, of any proposals which would allow for the continuation of broadly comparable schemes, before the retendering process is commenced.

**1.27** Where an incumbent provider offers a broadly comparable scheme, this should wherever possible be broadly comparable to the scheme that staff would be in had they remained in the public sector and not been transferred out. In future, public service pensions will be calculated on a career average re-valued earnings (CARE) basis, rather than on a final salary basis. Where the relevant public service scheme for the purpose of the broad comparability assessment is a CARE scheme, the prospective employers' scheme should be a CARE scheme,<sup>13</sup> with provision made to provide transitional protection to those staff that would have been eligible for this, had they remained in a public service scheme (see paragraph 2.21 of Section 2 below). Where this is not possible, for example due to existing employment contracts, or because it is not possible to amend the current scheme rules, the broadly comparable pension scheme offered by the incumbent should be broadly comparable to the public service pension scheme to which the staff had access when they left the public sector.

**1.28** In exceptional cases it is conceivable that, even if the contracting authority allows the incumbent provider to provide either access to a public service pension scheme or a broadly comparable pension scheme, the authority would still be unable to comply with its obligation under procurement law to treat economic operators equally. In such exceptional circumstances, to ensure that appropriate pension protection can be secured, the contracting authority may require both the incumbent and new bidders to provide a broadly comparable scheme, rather than access to a public service scheme. In these circumstances the broadly comparable scheme should, wherever possible, be broadly comparable to the public service scheme staff would have been in had they remained in the public sector and not been transferred out. The incumbent and new bidders should be permitted to bid on the basis that they will provide a broadly comparable scheme only where it is not otherwise possible to comply with procurement law.

**1.29** There may be cases in which an incumbent contractor has a contractual obligation to provide staff with a broadly comparable scheme, so that the incumbent is unable to provide access to a public service scheme instead. In such cases, the contracting authority should ensure that the incumbent seeks to re-negotiate the employment contracts to provide for access to the appropriate public service pension scheme following the retender. Where however the incumbent is unable to secure agreement to a change in employment contracts, it may provide ongoing access to the broadly comparable scheme. That is, where a contracting authority is satisfied that the incumbent contractor would be unable to provide access to a public service pension scheme were it to be successful in bidding for the retendered contract, they should allow the incumbent to continue to provide the broadly comparable scheme instead. In these circumstances, the contracting authority should consider whether it would be necessary to allow all bidders to compete on this basis where it would otherwise not be possible for the contracting authority to comply with their procurement duties.

**1.30** Annex A to this guidance provides further details about how broad comparability assessments should be carried out.

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<sup>13</sup> There could be circumstances where the relevant public service scheme is subsequently changed to provide different benefits to those that were provided when the broad comparability test was carried out. In these circumstances, whether to make changes to the provider's scheme to reflect the changes in the public service scheme against which the provider's scheme was compared will be a matter for the relevant contracting authority and employer to consider on a case by case basis.

**1.31** Employees who left their public service pension in deferment, rather than bulk transferring it to the new employer's scheme when they transferred from the public sector, will not have the option of maintaining their final salary link for any previous service accrued in the old final salary scheme, unless permitted by the scheme's rules. For example, such an option may be available if they are returning to the public service scheme within five years of leaving. This will apply whether or not they opted to join the employer's broadly comparable pension scheme. These employees will be subject to the same rules as other deferred members when returning to the public service scheme.

**1.32** There may be circumstances apart from the retender of existing contracts where employers and/or contracting authorities consider there is an opportunity to return employees to a public service scheme. Such circumstances might include cases in which an existing employer is declared insolvent or where there is a change in ownership of the existing employer, or where employees are transferred to another employer as a result of the service or function being sub-contracted. Decisions on whether staff should be returned to a public service pension scheme in circumstances other than a retender should be made on a case by case basis.

## 2 Enabling participation in the public service pension schemes: further guidance

### Access to the public service pension schemes

**2.1** Staff who are members of a public service pension scheme and who are compulsorily transferred out of the public sector will normally participate in the relevant public service pension scheme in their new employment. They will continue to (be eligible to) accrue further pension benefits in that scheme in respect of their new employment and their pensionable service will be treated as though it were continuous.

**2.2** The contracting authority must provide the scheme manager and the new employer with a list of the individuals that are covered by this guidance as soon as the list of transferring employees is finalised.

**2.3** Staff who were eligible to participate in a public service pension scheme immediately prior to the transfer, but had opted that their service should not be pensionable, should be enrolled in the scheme on the day that the new employment commences.

**2.4** If a transferred person ceases to be employed on the transferred service or function they will normally cease to be eligible to be a member of the public service pension scheme (subject to exceptions that may be made for staff moved to another transferred service or function – see paragraph 2.6 below – or where a person would otherwise be eligible to be a member in respect of that new employment). The employee will become a deferred member of the scheme as they will have ceased to be in a qualifying employment.

**2.5** A person who remains wholly or mainly employed on a transferred service or function will remain eligible to be a member of the pension scheme in respect of that employment. Where a person moves from full-time to part-time employment, or otherwise reduces the proportion of their time employed on the transferred service or function so that they are no longer wholly or mainly employed on that service or function, they will continue to be eligible to be a member of the pension scheme to the extent that the transferred employment continues. The responsible authority for a public service pension scheme should set out how they will interpret this paragraph in guidance on how the Fair Deal policy will operate for that particular scheme. The responsible authority may also set out, within the scheme regulations, a Participation Agreement or elsewhere, the circumstances in which a person will be regarded as remaining wholly or mainly employed on a transferred service or function and when a person will be eligible to remain a member of the pension scheme in respect of a proportion of a whole time employment.

**2.6** Where a person ceases to be employed on the transferred service or function, but is employed in another role where staff undertaking that service or function are eligible to be members of the same public service pension scheme, they may be permitted to remain a member of the scheme if they elect to do so, and the contracting authority and employer consent. This may be desirable to provide for greater labour mobility between transferred services or functions, or to allow employers to manage their workforce across different

contracts. Such arrangements may be made on a case by case basis, or the contracting authority and employer may consent to these arrangements generally.

**2.7** The responsible authority, through scheme regulations, a Participation Agreement or any other means, should specify the information that participating employers are required to provide to the scheme manager or such other person as they determine. This is necessary to ensure that the pension scheme's internal controls can be operated effectively and to enable the scheme manager and pension board to manage and administer the scheme in compliance with their statutory responsibilities. This must include an obligation on the employer to notify the pension scheme when an individual is no longer eligible to be a member of the public service scheme in respect of some or all of their employment, and of any other matter determined by the scheme manager.

## **Employer and employee contributions to the scheme**

**2.8** Scheme regulations and internal controls must include provisions to manage the risk associated with allowing a wider range of employers and employees to participate in the public service pension schemes.

**2.9** Both employees and employers will be required to pay contributions to the pension scheme. Employees will be required to pay employee contributions in line with those paid by members of the scheme working in the public sector. These will be determined under the scheme regulations and may change following an actuarial valuation of the scheme. The employer will be required to collect the appropriate employee contributions and to ensure that these are paid to the scheme in accordance with the requirements set out in the scheme regulations or by the scheme manager.

**2.10** Employers will be required to pay employer contributions in respect of employees covered by the Fair Deal policy. The contributions will normally be set at the same level as the employer contribution rate paid by all other employers in the scheme.

**2.11** Failure to pay contributions by the date they are due may require the scheme manager to notify the Pensions Regulator of the contravention.<sup>1</sup> The Pensions Regulator may in turn investigate and take enforcement action to recover the overdue payment from the employer.

**2.12** The normal rate of employer contributions payable to the scheme may change from time to time following an actuarial valuation of the scheme. The contribution rate paid by employers participating in the scheme under the new Fair Deal policy will normally be adjusted to reflect the outcome of the scheme valuation.

**2.13** The contracting authority and employer may wish to agree in advance that the contracting authority will provide additional funding or reduce funding as appropriate in the event of a change in the employer contribution arising from a valuation. This will enable contracting authorities to ensure value for money from contracts by removing the need for the employer to price for the risk of an increase in employer contributions, which may not materialise. Similarly, the contracting authority may wish to require that any saving in employer contributions made as a result of a reduction in the employer contribution rate(s) is to be paid to the contracting authority so as to prevent a windfall gain for the employer.

**2.14** In addition, the contracting authority may also wish to require that any savings in employer contributions arising as a result of staff eligible for Fair Deal protection moving from the public

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<sup>1</sup> Under section 70A of the Pensions Act 2004 (Duty to report late payment of employer contributions), to be inserted by Schedule 4, paragraph 7 of the Public Service Pensions Act 2013.

service contract or otherwise ceasing to participate in the scheme are to be paid to the contracting authority.

**2.15** Alternatively, scheme regulations may provide for the charging of differential rates of employer contributions to employers participating in the scheme under the new Fair Deal policy. This may be appropriate to take account of any higher risk of default associated with an employer or to reflect the nature of an employer. Scheme regulations themselves may provide criteria for charging differential rates, or may provide the responsible authority with the power to issue a direction in respect of a body that is allowed to participate in a scheme. Where regulations allow for a direction to be issued, the direction may determine differential contribution rates where they are necessary to protect the pension scheme from incurring additional costs arising from the employer's participation in the scheme. The decision on whether to charge differential rates to an employer will be made by the relevant responsible authority or, if the regulations permit it, the scheme manager.

**2.16** Scheme regulations or a direction issued by the responsible authority may also include provision to charge employers an exit payment where the scheme manager identifies that the liabilities attributable to the employer's participation in the scheme have not been met by the contributions paid up to that point. Where scheme regulations or a direction provide for an exit payment, the Participation Agreement should refer to the relevant regulations or direction (as amended or varied from time to time). The scheme actuary will carry out the assessment for the scheme manager, the costs of which will be recovered from the employer.

**2.17** Scheme regulations or a direction issued by the responsible authority may also allow the scheme manager to require an additional payment from the employer, if the employer has breached any of the terms of the Participation Agreement in a way which leads to an increase in scheme liabilities. In these circumstances, the amount payable would be determined by the scheme manager, having taken advice on the cost of the additional liabilities from the scheme actuary.

**2.18** In order to protect the scheme from incurring costs arising from the actions of the employer, scheme regulations or any direction may also provide for the charging of interest on employer and employee contributions when paid late to the pension scheme. The rate of interest to be charged will be set out in scheme regulations or any relevant responsible authority direction.

**2.19** Scheme regulations or any responsible authority direction may provide for the scheme's administration costs arising from the employer's participation in the scheme to be met by the employer. Where scheme regulations provide for administration costs to be met by employers, the Participation Agreement should refer to the relevant regulations (as amended or varied from time to time).

**2.20** Scheme employers may be required to provide indemnities, guarantees or bonds to protect the scheme from potential costs arising from their participation in the scheme. For example, a bond may be required that is sufficient to cover any contributions owed to the scheme in the event of the employer's insolvency. The amount of any indemnity, guarantee or bond provided will be subject to regular review. The employer may be required to provide additional funds if the potential liability to the pension scheme changes. For example, this may arise due to a change in the size of the pensionable payroll, or a change in the employer contribution rate.

**2.21** There will be a large number of people covered by the new Fair Deal policy with final salary pension rights as a result of service prior to 2015. The Government's decision to provide

transitional protection to those closest to retirement,<sup>2</sup> and to maintain the final salary link for service in the existing public service pension schemes, means that pay in the final years of an employee's career will have a direct impact on the cost of providing their pension.

**2.22** Some scheme regulations contain provisions to limit the pensionability of any large increases in salary in the final years of an employee's employment. In addition to these provisions (where they exist), scheme regulations or a direction may provide that an employer will be liable for the additional costs arising from increases in pensionable pay beyond any specified limits.

**2.23** Finally, Participation Agreements may set out how additional costs arising from the early termination of employment, employer decisions and the exercise of employer discretions, and any other matter that may give rise to additional pension costs are to be paid for. Schemes may require employers to meet the additional costs arising in any such situations.

**2.24** Contracts and Participation Agreements will need to provide effective methods of enforcing the controls that are to be imposed on participating employers.

## Administration and monitoring

**2.25** Employers with employees covered by the new Fair Deal policy will be required to provide such information to the scheme manager as is necessary to ensure the efficient running of the schemes, to meet the requirements placed on them by the pensions legislation<sup>3</sup> and to provide for the effective monitoring of the new Fair Deal policy. Information requirements for each scheme will be set out in scheme regulations, which will reflect any requirements placed on schemes by a Treasury direction made under section 15 ('Information about schemes') and regulations made under section 16 ('Records') of the Public Service Pensions Act 2013. Further requirements may result from the making of a direction under section 25 ('Extension of schemes') of that Act.

**2.26** There will be a duty on employers to report changes in employees' eligibility to the scheme as soon as the changes occur – for example, if employees leave the employer, reduce the proportion of time they are employed on the transferred service or function or move to another employment with the employer.

**2.27** The scheme administrators will also be able to request any additional information that may be required for the good administration of the scheme or to monitor the implementation of the new Fair Deal policy.

**2.28** Scheme managers will be required to submit information to the Treasury on the operation of the new Fair Deal policy to allow for cross-Government monitoring of the roll-out of the new policy. Schemes will be obliged to report:

- the number of transferred staff that are enrolled in a public service pension scheme on the day that their new employment commences;
- the number of employees covered by the new Fair Deal policy on the anniversary of the contract being awarded and at the end of the contract; and
- the contributions (employer and employee) paid in respect of these employees

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<sup>2</sup> Workers in the main public service pension schemes who, as of 1 April 2012, had 10 years or less until they reach their Normal Pension Age (NPA) will see no change in when they can retire, and no decrease in the amount of pension they receive at their current NPA. In addition to this transitional provision, tapering provides some protection to those who were between 10-14 years from their current NPA on 1 April 2012.

<sup>3</sup> That is, 'pensions legislation' within the meaning of section 13(7) of the Pensions Act 2004. This includes regulations issued by the Secretary of State for Work and Pensions that specify the records that must be kept by scheme managers.



- details of employers that have failed to meet their responsibilities as employers in the schemes.

The Treasury will monitor the length of time that employees covered by the Fair Deal policy work on outsourced public service contracts, and the rate at which protected staff cease to be covered by the Fair Deal policy.

**2.29** Schemes will also be required to provide the scheme actuary with any data necessary to:

- conduct periodic valuations of the scheme as a whole; and
- value the liabilities accounted for by those employees and former employees that are covered by the Fair Deal policy.

Treasury directions on information, to be made under section 15 of the Public Service Pensions Act 2013, may incorporate these requirements for reporting on the operation of the new Fair Deal.

## Bulk transfers for retendered contracts

**2.30** Staff moving back into either a public service scheme or to a new provider's broadly comparable scheme will have the option of having their accrued pension rights protected via a bulk transfer arrangement. As with other types of transfers, this will require a transfer payment to be made by the transferor scheme to the receiving scheme which extinguishes the transferor scheme's liability to the person transferring their accrued benefits from the scheme. Deferred pensions of former staff who have left the employment of the employer prior to the retender are generally not expected to be included in bulk transfers back to public service pension schemes.

**2.31** All contracts covering employees protected by the Fair Deal policy should include clear provisions about how staff pensions should be handled at the end of the contract.<sup>4</sup> These provisions in contracts will need to be carefully considered where staff are returned to a public service scheme or transferred to a new provider's broadly comparable scheme. More detailed guidance for employers on managing bulk transfer arrangements is provided at Annex B. All existing contracts should include an enforceable obligation on the employer to allow for an onward bulk transfer agreement under which the onward terms are no less favourable than the inward terms (allowing for any shortfall terms) for the bulk transfer into the new employer's broadly comparable scheme. This no less favourable requirement applies in respect of benefits which arose in the employer's broadly comparable scheme as a consequence of the inward bulk transfer and applies only for those members who wish to transfer their accrued benefits under the onward bulk transfer agreement. In relation to such benefits each contract should tie the scheme receiving a bulk transfer into providing funds for an onward bulk transfer value sufficient, at least, to match the value which would be generated by replicating the terms of the agreement under which the scheme received the inward bulk transfer at the beginning of the contract. For this purpose, where the inward terms and/or the shortfall terms involve assumptions which are stated as being, for example, financial assumptions as at the vesting date or TUPE transfer date, the financial assumptions which should be used are those as at the vesting date or TUPE transfer date applicable to the contract re-let.

**2.32** The contracting authority should provide details of the onward bulk transfer terms to each of the other bidders in the procurement, along with details of the service credits which each of their schemes will need to provide. The service credits will be on a day-for-day basis or actuarial

<sup>4</sup> Where contracts do not contain such provisions, the agreement of exit terms from any broadly comparable scheme will be a matter for the employer and contracting authority to determine.

equivalent where there are benefit differences between the two schemes. Because financial and demographic conditions may evolve over the life of a contract, there may be a risk that the onward bulk transfer terms are considered insufficient to cover the liabilities that would arise in the pension scheme being offered by the bidder. Bidders should therefore indicate in their bid documentation if they agree to those bulk transfer terms or if any price adjustment (shortfall) is proposed on account of the acceptance of those terms. It will be for the contracting authority to cover the costs of the work that the scheme actuary undertakes in carrying out the bulk transfer action on behalf of a public service pension scheme where staff can elect to transfer their accrued benefits to that scheme.

**2.33** Where staff elect to transfer their accrued benefits to either a public service scheme or a new provider's scheme, subject to the contracting authority being satisfied that the requirements of this guidance on bulk transfer arrangements have been met, the contracting authority is required to cover the costs of this shortfall but not to meet any other costs which may arise due to the termination of the existing pension arrangements. When assessing shortfall claims, it is important that contracting authorities ensure that the onward bulk transfer terms properly reflect the obligations on incumbent providers set out at Annex B, including allowance for the underpin and any shortfall terms in connection with the inward terms for the incumbent provider's scheme. When considering shortfall claims, the contracting authority must ensure adherence to the requirements set out in Annex B.

# A

## Annex A: Broad comparability assessments

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**A.1** The Fair Deal guidance sets out certain circumstances in which employers may offer a broadly comparable scheme rather than providing access to a relevant public service scheme. This annex sets out how broad comparability assessments are to be carried out when an employer is providing a broadly comparable scheme. An assessment may be carried out by any qualified actuary.

### Broad comparability

**A.2** Central to the process is the requirement for an assessment of whether pension arrangements being offered to employees by their employer are broadly comparable to the relevant public service scheme. This requirement relates only to the period of employment after the new contract commences (future accrual).

**A.3** A broadly comparable scheme will be one which, in the professional opinion of an actuary, satisfies the condition that there is no identifiable group of employees who would overall suffer material detriment in terms of their future accrual of pension benefits under the scheme compared with the relevant public service scheme assessed in accordance with this guidance. An identifiable group is a group which is identifiable by age, gender, salary level, service length or scheme membership category. Identifiable groups covers employees only, and not the dependants of those employees.

**A.4** Pension arrangements which satisfy the broad comparability requirement will be certified as such. The onus will be on the relevant contracting authority to ensure that the pension promises made by the prospective employer are delivered for the staff concerned.

**A.5** Broad comparability assessments may be commissioned by a public sector employer, by a contracting authority, or by a private sector employer. Where an assessment is being carried out with reference to transferring staff, the assessment should be carried out in relation to the group of staff entitled to Fair Deal protection, irrespective of whether they are currently members of the relevant scheme. Alternatively, the assessment may be carried out on a generic basis, not related to specific staff, with a view to obtaining a certificate confirming that the scheme is broadly comparable to the relevant public service scheme for a wide group of employees. Any such certificates must confirm the groups of employees that are covered and, where appropriate, highlight any material groups that are specifically excluded.

**A.6** In either case, the principles are the same. Where no specific group of employees is identified, the assessment should be conducted using a range of employee profiles with different characteristics covering the various membership categories and affecting the value of pension rights, including age, gender, salary level and service length.

**A.7** Broad comparability assessments do not cover the bulk transfer of accrued benefits earned before the transfer of employment – further details on these arrangements are set out in Annex B. However, broadly comparable schemes must include provisions to accept a bulk transfer value, or to pay a bulk transfer value to another broadly comparable scheme, in accordance with the requirements set out in Annex B.

## Benefits against which assessment is made

**A.8** A broad comparability assessment will be carried out by testing the proposed benefits and contributions in the alternative scheme to be provided by the relevant employer against those in the relevant public service scheme. For this purpose, the benefits and contributions in the relevant public service scheme are those applicable at the date on which the new contract commences except in those circumstances where an employer is providing a scheme which is broadly comparable to the relevant public service scheme from which staff originally transferred. In this case, the benefits and contributions in the relevant public service scheme against which the assessment is to be made, are those which were provided at the original date on which staff first transferred from the public service.

**A.9** In either case, the assessment should take account of benefits and contributions under each scheme to which members have a right at the appropriate date, and should include allowance for any changes to those benefits and contributions which, before the appropriate date, had already been incorporated into scheme rules, regulations or other documentation, or which had been formally agreed and published in sufficient detail.

**A.10** The broad comparability assessment will not take account of any benefits which are payable solely as a result of a member being declared redundant, either compulsorily or voluntarily, where those exceed the normal benefits available to an individual who resigns from employment at that time.<sup>1</sup>

**A.11** The broad comparability assessment will not take account of any injury benefits payable as a result of injury or death while in the service of the employer.

## General Principles

**A.12** The general principles on which the assessment of broad comparability should be made are set out below. It must be recognised that some flexibility may need to be applied in the practical implementation of these principles.

### Value

**A.12.1** The overall value of the scheme should be equal to or greater than that of the relevant public service scheme.

**A.12.2** In addition to the test of overall value, assessments of value will be made separately for different categories of member and different types of individual, e.g. for different pay levels, for different ages, and for any other characteristics which could reasonably be expected to have a material impact on the value of pension benefits.

**A.12.3** Value is assessed by calculating, on consistent actuarial assumptions and methods (see the section on 'actuarial assumptions') the underlying employer costs, in excess of the employee's share of the cost, of providing the benefits under the scheme which will accrue over the expected remaining working lifetimes. This approach to the assessment of cost is known as the 'Attained Age Method'.

**A.12.4** Value is considered as that in the hands of the employee before any liability for tax or national insurance. No allowance is made for the possible impact of the annual allowance or lifetime allowance on the employee contributions payable, or on the benefits provided, or for

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<sup>1</sup> The rights to redundancy benefits automatically transfer if TUPE is engaged.

any fixed or other forms of protection which employees may have against the effect of changes in those allowances.

## Contributions

**A.12.5** Schemes with higher rates of employee contributions than the relevant public service scheme will not be deemed broadly comparable because of the implied reduction in net pay unless the employer provides a compensating pay uplift. Pay uplifts should be expressed as a percentage of basic salary and should continue for the duration of contributory membership of the scheme.

**A.12.6** Employers may offer eligible staff the option of joining a salary sacrifice arrangement, in which case the benefits available in the scheme must be the same as those which would have been available if there had been no salary sacrifice arrangement.

## Benefits

**A.12.7** The range of benefits provided under the scheme must at least match that provided by the relevant public service scheme.

**A.12.8** Benefits must be available from the scheme in respect of the same events and at the same time as would arise in the relevant public service scheme, unless this would be prohibited by legislation or unauthorised in accordance with the Finance Act 2004.

**A.12.9** Where the relevant public service scheme provides certain benefits without requiring employer or scheme manager consent, the scheme cannot require employer or trustee consent in respect of those benefits.

**A.12.10** Member options which are available in the relevant public service scheme (for example, added pension facilities or the option to provide additional survivor benefits) do not need to be provided in the scheme.

**A.12.11** In some cases, the amount of benefit may be lower on a particular contingency than under the relevant public service scheme, but this will need to be balanced by better benefits on other contingencies, or by a lower contribution rate. However, there should not be a material skew in the benefits or employee contributions payable, when compared with the public service scheme. However, when carrying out the assessment, the actuary should consider the extent to which it is appropriate to take account of benefit design features which might materially disadvantage certain employees whom are not considered identifiable groups, such as members that choose to commute more or less of the pension entitlement, or members eligible for ill-health benefits. This would not prevent the adoption of such benefit designs, if these are otherwise permissible under this guidance, but the assessment should limit the extent to which such other types of employees might be materially disadvantaged as a result. For example, the provision of a major 'feature A' at the expense of another major 'feature B', the detriments being introduced in 'feature B' may be limited so no material disadvantage results for those members unable to (or unlikely to) gain from 'feature A'. As outlined in 14.4, the actuary may wish to set assumptions to give effect to this requirement.

**A.12.12** Normal retirement age – at which full unreduced retirement benefits are available as a right and at which deferred benefits are payable in the scheme – will be no higher than in the relevant public service scheme.

**A.12.13** Benefits and contributions must be calculated on a definition of pensionable pay in the scheme of at least the value of that applying in the relevant public service scheme.

**A.12.14** Where a previous transfer has occurred under Fair Deal, time spent with any previous employer (whether in the public or private sector) which would have counted towards qualification for benefits in the relevant scheme, will count in the employer's scheme as qualifying service, regardless of whether or not accrued rights are transferred to the scheme.

**A.12.15** The scheme must provide some level of ill-health benefits, although the form and level of the benefit can differ. There is no requirement for the scheme to match different tiers of ill-health benefits provided by the relevant public service scheme. Employers may provide long term sickness and disability benefits to employees under contracts of employment, whether through a salary continuation arrangement, permanent health insurance or otherwise, provided employees have the option instead to apply for ill-health retirement under the scheme. Membership of the scheme should continue for any period during which such benefits are payable. Eligibility criteria for ill-health retirement should be no worse than those applicable in the relevant public service scheme. The scheme trustees will decide whether to permit ill-health retirement on such medical advice as they determine. Employer consent should not be required if no such consent is required in the relevant public service scheme.

**A.12.16** The scheme must also provide death-in-service benefits which must be in the same form as those provided by the relevant public service scheme – e.g. both a lump sum and survivor's pension – although the level of benefits can differ. Survivors' pensions must be payable in the same circumstances to the same individuals who would have qualified for such a pension in the relevant public service scheme.

**A.12.17** The broad comparability requirement does not impose any obligation on schemes to pay benefits which would be unauthorised in accordance with the Finance Act 2004. Alternative arrangements would need to be made by the employer to comply with any obligation which cannot be met by the scheme.

## Membership

**A.12.18** In circumstances where staff will no longer be eligible to remain in their existing scheme all staff who are eligible for Fair Deal protection will automatically become members of the scheme to which they have become eligible to join on the day immediately following that on which they are required to leave their existing scheme, without medical examination. This would not interfere with an employee exercising his/her right to choose to opt out of scheme membership, subject to the auto enrolment requirements. Staff must be eligible to continue accruing benefits in the scheme to which they have become eligible to join after normal retirement age, for at least as long as they would have been eligible to do so in the relevant public service scheme.

## Security

**A.12.19** It is recognised that the security of a private sector scheme cannot be provided in the same form as that applying in the relevant public service scheme, but the private sector scheme must offer specific safeguards in the following areas:

- protection of accrued rights, on an on-going basis (including any final salary link or a higher in-service revaluation rate), on any rule change; and
- changes inspired by the employer, including loss of the contract, involving cessation of membership of the current broadly comparable arrangements, will trigger the offer of a bulk transfer payment or enhancement of benefits within the arrangements, to a level commensurate with existing benefits, on an on-going basis (including any final salary link or a higher in-service revaluation rate).

## Type of Scheme

**A.12.20** Only defined benefit schemes can be certified as broadly comparable to defined benefit schemes. Only defined contribution schemes can be certified as broadly comparable to defined contribution schemes.

## Actuarial assumptions

**A.13** Broad comparability assessments depend on a number of actuarial assumptions. These cover financial and demographic factors for the period which continues until pension payments to the employee and to his or her dependants have ended.

**A.14** In conducting broad comparability assessments, the actuary will be responsible for determining the assumptions in line with the general principles outlined in this annex, including the following principles:

**A.14.1** Best estimate – the assumptions should broadly reflect a best estimate of the cost of providing the benefits in the public service scheme (for example, in line with assumptions that the actuary considers would be appropriate within the public sector for recommending an employer contribution rate in the relevant public service scheme), after allowing for employee contributions, where benefits and contributions are those defined in legislation.

**A.14.2** Simplicity – a broad comparability assessment involves a comparison of two different benefit structures, so the focus should be on those assumptions which could have a more significant effect on the comparison. In particular, it is not necessary to adopt assumptions to value more minor features in a benefit structure, although due account should be taken where appropriate when a feature is present in one benefit structure but not in the other.

**A.14.3** Stability – assumptions should be changed infrequently, so as not to unduly disrupt procurements which are in progress and minor changes in assumptions should be avoided wherever possible. There should be a reasonable expectation that a certificate of broad comparability would remain in force for a substantial part of its validity period, other things being equal.

**A.14.4** Comparability – assumptions should not be adopted which allow a material skew in the benefits or employee contributions payable being assessed as broadly comparable to the public service scheme. For example, a reduction in the terms attaching to the benefits, so as to justify a reduction to employee contribution rates, should be limited in order not to materially disadvantage employees for whom a contribution reduction has less value than the corresponding reduction in benefits.

**A.14.5** Transparency – the assumptions which have a material effect on the assessment should be published. The actuary must be available to answer questions or queries from employees involved in a staff transfer exercise, their trades unions or other recognised representatives, and from government departments and other contracting authorities conducting procurements involving a staff transfer exercise, about his/her broad comparability assessment, the assumptions he/she has adopted and the resulting certificate of broad comparability.

**A.14.6** Fairness – the actuary should recognise that broad comparability underpins the protection of employees' future pension rights and that any assessment should fairly balance the employees' interests.

**A.14.7** Independence - the actuary providing the broad comparability assessment for the design of benefit structures should be independent of the actuary advising the new employer on those structures. It is hard to envisage circumstances in which it would be appropriate for the same actuary to advise both the private sector employer whilst also providing a certificate of broad comparability.

# B

## Annex B: Bulk transfers

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**B.1** The Fair Deal guidance sets out the circumstances in which staff who are entitled to Fair Deal protection could be either given access to a relevant public service scheme or transferred to a new provider's broadly comparable scheme. This annex sets out how bulk transfer arrangements for eligible staff should be implemented in these circumstances.

**B.2** In these circumstances, staff may have accrued rights in their current pension scheme which, immediately prior to transfer, are linked to future salary increases or active service revaluation (where this exceeds deferred revaluation for career average schemes) and which qualify for protection under the bulk transfer arrangements of the Fair Deal policy.

### Certificate of broad comparability

**B.3** Where a prospective provider competes for a contract on the basis that it will provide a broadly comparable scheme it must provide details of its broadly comparable scheme, together with a valid certificate of broad comparability. No certificate is required where a bidder will offer membership of an appropriate public service pension scheme to all the staff involved. The contracting authority should verify that the certificate of broad comparability covers all the staff involved and that there are no exclusions or exceptions in the certificate which apply to any of the staff involved.

### Bulk transfer agreement

**B.4** The incumbent provider's pension scheme should issue proposed terms for the bulk transfer agreement ('Letter A') in line with the exit provisions outlined in the existing contract, where appropriate. All actuarial assumptions stated in Letter A must be capable of independent determination/verification. Assumptions should not be accepted which are based on an in-house model, or are based on statistics which are not publicly available, or accessible. Letter A will only apply to those staff who elect to transfer their accrued benefits from the incumbent provider's pension scheme under the bulk transfer arrangements.

**B.5** Bulk transfer terms offered by the incumbent provider's pension scheme should be on the basis that they are non-negotiable. These should be provided at an early stage of the procurement exercise to allow other bidders to take these terms into account in their bids. Compliant bids should be on the basis that the appropriate public service scheme (or provider's broadly comparable scheme) will accept those bulk transfer terms.

**B.6** The contracting authority should separately issue details of the service credits which must be awarded in the public service scheme (or a broadly comparable scheme) for those members who consent to the transfer of their accrued benefits from the incumbent provider's pension scheme. The service credits will be on a day-for-day basis, or on a basis of actuarial equivalence where there are benefit differences between the two schemes. These details should specify if the service credits apply to a benefit structure that is different in any way to that reflected in the certificate of broad comparability for another bidder's scheme. The issue of these details may be delayed if a bidder is unable to confirm whether it will offer membership of the relevant public service



scheme; or to provide details of the broadly comparable scheme which it intends to offer (or if that scheme is yet to be certified as broadly comparable).

**B.7** The incumbent provider's pension scheme should carry out the options exercise after the transfer of employment if staff are to be offered membership of a different pension scheme. Staff who are members of the incumbent provider's pension scheme will have three months from the date their option packs are sent out in which to consider whether or not to transfer their accrued benefits on the terms set out. After this three month period has expired, the option to transfer under the bulk transfer terms will lapse. Only staff who elect to transfer within this period by completing and returning the paperwork in the options pack can qualify for a transfer under the bulk transfer terms.

### Price adjustments/shortfall requirements

**B.8** In the circumstances where a bidder intends to offer a broadly comparable scheme, bidders should state in their bid documentation whether they are willing to accept the bulk transfer terms offered under Letter A without a price adjustment. If a price adjustment is sought, then bidders should provide details of the bulk transfer terms required ('Letter B') in order for their broadly comparable scheme to offer the required service credits, together with details of their calculations for the amount payable under Letter A and the amount required under Letter B. The contracting authority is required to liaise with the incumbent so that the contracting authority can pass on, to the bidder, the necessary information (e.g. member data and benefit structure of the incumbent provider's pension scheme) for the bidder to calculate the amount payable under Letter A.

**B.9** Where access to the relevant public service scheme is proposed, the bulk transfer terms required by the public service scheme (Letter B) should be provided to bidders by the contracting authority.

**B.10** The difference between the amount required under Letter B and the amount payable under Letter A is the price adjustment. This may be positive (if Letter A results in a lower figure than Letter B) or negative (if Letter A results in a higher figure than Letter B). A positive price adjustment is often described as a shortfall requirement.

**B.11** In all cases, Letter B should apply to the same members as Letter A, and all actuarial assumptions stated in Letter B must be capable of independent determination/verification – assumptions should not be accepted which are based on an in-house model, or are based on statistics which are not publicly available, or accessible. The terms set out in Letters A and B should remain valid for the duration of the procurement exercise wherever possible. If for any reason the terms in either letter are to be amended before the procurement exercise is complete, the contracting authority should liaise with all parties involved in determining how these changes should be reflected in the procurement exercise.

**B.12** Where a bidder intends to offer a broadly comparable pension scheme and a price adjustment is sought, the bidder should also provide a "Reasoned Statement of Need" in justification of why they consider that either more or less is required than the bulk transfer value produced by Letter A.<sup>1</sup> Contracting authorities should rigorously test the reasonableness of any price adjustment being sought and seek appropriate advice as required. Contracting authorities should check whether the reasons given for any price adjustment are the same as those already used to justify a shortfall payment in an earlier tender. However, where a bidder intends to offer membership of an appropriate public service scheme, no Reasoned Statement of Need will be

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<sup>1</sup> In practice, Letter B and the Reasoned Statement of Need may be combined, as long as the required information is provided.

required. For the avoidance of doubt, an incumbent may also seek a price adjustment whether the incumbent provider proposes to offer membership of an appropriate public service scheme or continued membership of its broadly comparable scheme.

**B.13** Any price adjustment that is agreed as part of this process will form part of, and be taken into account, as part of that contractor's bid for the contract. Subject to any contrary provision in existing contracts, where a shortfall requirement arises for a successful bidder, the contracting authority will make a payment to that bidder for prompt payment into the appropriate public service scheme (or bidder's broadly comparable scheme). The payment to the successful bidder may allow for adjustments for the effect of any differences in the tax treatment of the receipt of the payment by the successful bidder and the payment by the successful bidder into the appropriate public service scheme (or bidder's broadly comparable scheme) if this is provided for in the contract.

**B.14** Although when submitting a Reasoned Statement of Need it will be open to bidders to make any observations or representations they wish about the bulk transfer terms on offer, the bulk transfer terms required ('Letter B') should be aligned to the funding requirements of the bidder's scheme. Reasoned Statements of Need which are aligned differently, for example to a bidder's accounting requirements, will not be acceptable.

### **Exit provisions**

**B.15** Where a bidder is proposing to offer a broadly comparable scheme, the contract should include clear pension provisions covering the position when the contract ends. Those provisions should give effect to the Fair Deal guidance in a subsequent re-tendering exercise by the contracting authority, whether or not the incumbent provider intends to bid to retain the contract. Incumbent providers must cooperate fully with contracting authorities to enable them to properly conduct a retendering exercise in compliance with all relevant legislation and guidance, and must ensure that they have arrangements in place to comply with any reasonable request from the contracting authority. In particular, incumbent providers must supply the contracting authority with all relevant employee data, including pension scheme membership data, if requested. Where relevant they must ensure that their existing broadly comparable scheme issues proposed terms for the bulk transfer agreement.

**B.16** Contract provisions must include an enforceable obligation on a bidder to ensure that the bidder's broadly comparable scheme makes an onward bulk transfer agreement with a new provider's broadly comparable pension scheme or the relevant public service pension scheme (where access is granted to the provider) in the event that any employees are transferred compulsorily to other employment that is not pensionable under the bidder's broadly comparable scheme, or are denied continuing membership of the bidder's broadly comparable scheme, whether due to a reorganisation or otherwise. This may also include a requirement that the bidder pays into the bidder's broadly comparable scheme/public service pension scheme such amounts as the scheme requests in order for the scheme to be able to make such an agreement.

**B.17** Moreover, the bulk transfer terms offered should be based on the offer of a 'Past Service Reserve', which should be calculated allowing for projected final salary at the assumed date of retirement, leaving service or death (in the case of final salary benefits), or allowing for the active service revaluation rate to be applied up to the assumed date of retirement, leaving service or death (in the case of career average salary benefits). The actuarial basis for the Past Service Reserve should be aligned to the funding requirements of the bidder's scheme, subject to an underpin. The underpin operates in relation to any service credits awarded in the bidder's scheme as a consequence of the bulk transfer/shortfall agreements when staff first transferred their past service benefits into the incumbent provider's broadly comparable scheme. The underpin is such that the element of the Past Service Reserve which relates to such service credits

can be no lower than that required by Letter A (or by Letter B if that exists and produces a higher figure) with the 'vesting date' used to determine the actuarial assumptions being the last day of employment of the staff by the incumbent under the bidder's contract. The service credits will be on a day-for-day basis or actuarial equivalent where there are benefit differences between the two schemes.

## Independant Financial Review Panel

**From:** mccartan@btinternet.com [mailto:mccartan@btinternet.com]

**Sent:** 22 October 2013 15:31

**To:** McAteer, Shane

**Cc:** Stewart, Richard

**Subject:** Public Sector Pensions - Draft Bill

Dear Mr McAteer

I am writing to you in your role as Committee Clerk for the DFP Assembly Committee on behalf of the Independent Financial Review Panel for the NI Assembly regarding the proposed legislation on NI Public Sector Pensions.

You may be aware that the IFRP has specific powers under clause 47 and 48 of the NI Act to determine the pensions provision in respect of all NI Assembly members. Our concern is that the proposals for NI Public Sector Pensions, specifically clauses 30, 31 and 32, as currently drafted, could possibly be interpreted as seeking to give the Minister for the DFP some powers or authority over the NI Assembly Members Pensions Scheme, contrary to the powers given to the IFRP under the NI Act.

Since I am not aware of any such intention on behalf of the Minister and DFP, I would welcome clarification from your Committee that it is not the intention of the draft legislation to subjugate the powers of the IFRP in respect of MLAs pensions. It would also be welcome to have the views of the Committee on how to avoid any possibility of such an interpretation being placed upon the draft legislation in the future should it become an Act. I am sure the DFP Committee are well aware of the need to keep separate the powers over matters of remuneration of Assembly members from the executive powers of the legislature, and would not wish to breach such an important principle.

I look forward to receiving the views of the Committee in due course, but if the IFRP can assist in any way with your deliberations, please let me know.

Meanwhile, I look forward to hearing from you.

Yours sincerely

Pat McCartan  
Chairman  
IFRP

# Submission received from Mitchel McLaughlin MLA

## Issues from DFP Committee Meeting 16<sup>th</sup> October – DFP Officials Input Further Information from FBU

### Primary Legislation

DFP Officials refer to the use of secondary legislation to resolve matters throughout their input but as we have already pointed out in our own submissions, when the Normal Pension Age (NPA) is set at 60 in primary legislation, then only forms of mitigation can be looked at. We are only seeking the primary legislation to be suitably flexible.

The Williams Report has made clear that the majority of Firefighters will not reach age 60 and still be able to maintain the appropriate Fitness levels, particularly Female Firefighters which we highlighted in previous submissions (copy provided) contrary to what was said by Ms Nesbitt at **point 1 on page 7**.

Ms Nesbitt is saying that there is no need to change the draft primary legislation because this can be manoeuvred round using secondary legislation later on.

This is exactly the point we raised, that it cannot. If the primary legislation says NPA 60 then that is fixed in law and remains.

The NPA is the earliest anyone can take an unreduced pension other than on grounds of ill health.

That is why our amendment (copy provided) is key to providing flexibility. It allows people to work to 60 if they can but allows those who can't the option of leaving from 55 without an actuarial reduction.

### Scottish Proposal

**At point 2 page 8**, Ms Nesbitt talks about the Scottish Government proposal but is inaccurate:

They haven't amended the accrual rate at all – that was done by HMT. What they have done is confirmed that the actuarial reduction offer presented by CLG Fire Minister Brandon Lewis was on offer to Scottish members irrespective of whether it was still on offer in England.

I mention this because we have not had confirmation that the 19 June position (Letter from BL –copy provided) is a firm offer. In fact he is constantly threatening to remove it and it is therefore still a conditional offer.

I will cover this 19 June point later

### New Firefighters Pension Scheme (NFPS) – NPA 60

**At point 3 page 10**, Ms Nesbitt mentions the fact that the NFPS has been in being since 2006 and that the NPA was 60. She mentions that this was introduced in 2006 without a major

outcry. This is inaccurate again as we were on the brink of strike action until we got a ring-fencing deal for current scheme members.

If that is not a major outcry we need to see what level of outcry we need to have before it registers on Ms Nesbitt's radar.

The age 60 was introduced recognising the problem about maintaining fitness etc but with the pretence of the job changing from intervention to prevention and the availability of non operational roles for older firefighters who could not maintain their fitness to 60.

We have presented evidence showing that there are no redeployment opportunities available in NIFRS.

### **Actuarial Reductions**

**At point 4 page** DFP officials start to respond to questions from Mr McAllister about actuarial reduction on early retirement.

They are confused by the position and do not accurately reflect the situation.

This is not our view but the written view of CLG in the Proposed Final Agreement (Heads of Agreement).

- Flexible retirement from the scheme's minimum pension age of 55, built around the scheme's Normal Pension Age of 60, with members able to take their pension from the scheme's minimum pension age as follows: – for all active members who are aged 57 or more at retirement, 2015 scheme benefits taken before Normal Pension Age will be actuarially reduced with reference to the 2015 scheme's Normal Pension Age, rather than the deferred pension age
- all other members will have their 2015 scheme benefits actuarially reduced on a cost neutral basis from the scheme's deferred pension age

If a firefighter retired at age 57 they would get a reduction in their pension by around 4% a year until age 60 but if this firefighter retires at age 56 they would get the reduction applied from State Pension Age.

This would mean that a firefighter;

forced to take an early retirement at 57 would see a reduction in their pension by just over 12% - (4% a year for the 3 years to NPA of 60)

while one who had to take early retirement at 56 would have one of over 48% (4% a year to SPA which could be as high as 68 )

Ms Nesbitt has applied the NPA to all actuarial reductions when the Heads of Agreement (HOA) document shows a much worse reduction for those below 57.

**(point 5, Page 11)** They have also used 3% instead of around 4% that is used in treasury and CLG docs. **DFP officials use the figure 3% which is inaccurate.**

This is the position we described in our presentation which is the position that is contained in the final proposal by CLG –Copy provided.

(Paragraph page 6)

We have been informed however that there is a better offer available subject to our full acceptance of the proposals. We are constantly being told that this will be removed if we take any strike action so it is not a position of certainty at all hence us referring to the HOA position

The better position is in a letter from Brandon Lewis on 19 June

What he is saying here is

That a firefighter who retired from 55 would see an actuarial reduction from 60 instead of SPA which would mean an actuarial reduction of 21.8% being applied.

This was subject to our agreement by 12 July and is not a firm position.

On two points DFP officials are not giving a reflection of the real threat for a firefighter who has to retire and access an early pension at age 56

We presented the accurate position for 55 and 56 year olds in line with the firm position in the HOA

A 55 year old ff would get an actuarial reduction from SPA under the HOA which would be more than 3%.

Even if the better position is finally offered and it is still uncertain the 55 year old firefighter would get an actuarial reduction of 21.8% applied – this is still a huge reduction.



Committee for Finance and Personnel

# OFFICIAL REPORT (Hansard)

Public Service Pensions Bill: Department of  
Finance and Personnel

16 October 2013



# NORTHERN IRELAND ASSEMBLY

## Committee for Finance and Personnel

### Public Service Pensions Bill: Department of Finance and Personnel

16 October 2013

**Members present for all or part of the proceedings:**

Mr Daithí McKay (Chairperson)  
 Mr Dominic Bradley (Deputy Chairperson)  
 Mr Leslie Cree  
 Ms Megan Fearon  
 Mr Paul Girvan  
 Mr John McCallister  
 Mr Mitchel McLaughlin  
 Mr Adrian McQuillan  
 Mr Peter Weir

**Witnesses:**

|                     |                                     |
|---------------------|-------------------------------------|
| Ms Margaret Coyle   | Department of Finance and Personnel |
| Mrs Grace Nesbitt   | Department of Finance and Personnel |
| Mrs Blathnaid Smyth | Department of Finance and Personnel |

**The Chairperson:** I welcome the departmental officials. We are well ahead of time, so we have two hours in which to grill you today. *[Laughter.]* We are trying to get to the nub of some of these issues, and there are a lot of clauses to go through. We will go through the Bill clause by clause and take questions from members for clarification from the Department.

We will start with clause 1. A number of concerns and questions were raised by some of the unions with regard to different bodies, particularly the arm's-length bodies (ALB). Given the person specified in clause 1(2) and the definitions at Schedule 1 of the Bill, what provision exists to enable those ALBs to piggyback on the main schemes currently and to continue to do so in the new schemes? Invest NI is included in the principal Civil Service pension scheme, and the Tourist Board is included in the local government pension scheme. Is that provided for under clause 25?

**Mrs Grace Nesbitt (Department of Finance and Personnel):** Some of the bodies that you have talked about are members of the principal Civil Service pension scheme. I supplied information to the Committee, albeit some time ago. I can reissue that, if that would be helpful. We have what we call a schedule attached to our membership. Most of our membership for the principal Civil Service pension scheme is made up of civil servants. About 80% are civil servants, but around 15% or 20% are made up of various others, or what we term schedule 1 bodies. That includes some of the bodies that you have mentioned. They would be included automatically and be part of the reforms that we are rolling out. If it would be helpful, I can supply that list to the Committee again. Would that be helpful?

**The Chairperson:** Yes.

**Mrs Nesbitt:** OK.

**The Chairperson:** Someone, I cannot remember who, made reference to clause 1(2)(c), which refers to local government workers, and thought that it would be better if it referred to "staff" instead of "workers", in case people thought it was people who work for local government, rather than those employed by local government.

**Mrs G Nesbitt:** In my view, doing work as a contractor for local government does not make you a local government worker. It is something that we looked at quite carefully when we were drafting the Bill, and it is something that we will take further legal advice on. However, at this point in time, my view is that that term is entirely appropriate, not confusing and consistent with our approach in pensions legislation previously. We will take advice, and I will come back to the Committee on that. My initial view is that there is no issue.

**The Chairperson:** Are members content with clause 1?

*Members indicated assent.*

**The Chairperson:** No issues were raised with clause 2. Are members content with clause 2?

*Members indicated assent.*

**The Chairperson:** Clause 3(3)(c) states that scheme regulations may allow any person to exercise a discretion. Can you elaborate on that?

**Mrs G Nesbitt:** No, I will have to get back to the Committee to give you further information on that.

**The Chairperson:** NASUWT raised concerns about clause 3 (5), which states that:

*"Scheme regulations require the consent of the Department of Finance and Personnel before being made, unless they are to be made by that Department".*

This is a recurring theme throughout the Bill; whether the Assembly should have some sort of say in some of those decisions.

**Ms Margaret Coyle (Department of Finance and Personnel):** It is all a requirement of the Superannuation Order 1972. The Department of Finance and Personnel (DFP) advocated that it has to approve the secondary legislation. The local government scheme was an exception to that. The Bill will formalise the scheme governance and cost control, and it is appropriate that DFP consent is required for all the schemes including the local government scheme. However, the point that must be made is that the local government scheme, as well as all the other schemes, will retain its responsibility for scheme-level discussions and consultations for employers and trade union side. That element has not gone, but the local government scheme will be included in the Bill under the responsibilities of the Department of Finance and Personnel.

**Mrs G Nesbitt:** You referred to the Assembly.

**The Chairperson:** Yes.

**Mrs G Nesbitt:** Our view is that the provision is adequate. That would be a matter for Ministers and would be a political decision, really, but this is how our pensions have been dealt with to date. Going back to the primary founding legislation for how pensions have been dealt with, that control has rested with the Department of Finance and Personnel, which would and will continue to consult on changes. Some of the issues that have come up have been questioning whether the Department will be consulting on valuations and directions, and yes, we will. We have not considered and will not propose any changes to that; it would be a matter for the Assembly.

I know Mr Weir wants to get in, but the intention is to wind back a little bit. The purpose behind all these reforms started by Lord Hutton under the Labour Government was to find a fair balance between the taxpayer, employer, citizen, however you want to describe that, and members of public service pension schemes. There are quite robust governance arrangements in there to ensure that that happens, with the intention, and I think that it is a laudable intention, of making public sector

pensions fairer while also making them sustainable. There are quite a lot of controls already built in, but if a political decision was that this should be a matter for the Assembly, that would be a political decision.

**Mr Weir:** Thank you, Grace. What we are saying is that the current system of approval is being rolled forward. No particular change is being made to that with the one exception of the anomaly that is the local government side being brought into line with the remainder of the public sector.

**Mrs G Nesbitt:** Yes. The intention is to bring the local government scheme into line but also to make the whole governance and management around that a more robust system with the view of protecting — I make that argument as a public servant — and making public sector pensions sustainable for everybody, not just higher earners.

**Mr Mitchel McLaughlin:** Is there not an issue here in that the Department is seen as having to have an absolute control? I do not think that it is a sufficient response to the concerns that have been brought forward in evidence to say that that is the way it has always been done and that we are just going to iron out the anomaly of the local government schemes. We need to be able to look at the argument for the Department's position and an evidence-based rationale that shows that is the best way of doing it, or else you will have to give us a response that examines the merits and demerits of some democratic oversight team.

**Mrs G Nesbitt:** This is primary legislation, enabling legislation and framework legislation, and the fact that there are more robust and transparent measures in there should assure members. It still leaves discretion at ministerial level for each sector and each scheme to look at how they want to manage their scheme to relate to the concerns of their workforce. That is another safeguard. It is not that total and absolute power resides in the Department of Finance and Personnel; there are high-level parameters. I may wish that it did, but it does not. *[Laughter.]* I know that is what you were thinking.

**Mr Mitchel McLaughlin:** You are trying to reassure me but I do not feel reassured. *[Laughter.]*

**Mrs G Nesbitt:** I will maybe have to try harder or give you something in writing if that helps, Mr McLaughlin. It is important, wearing my Civil Service pension hat and not my wider public sector coordinating hat, that each scheme and each Minister has scope to look at how they want to manage their scheme.

At the end of the day, what is a pension scheme about? To go back to real basics, it is about people paying something in and getting something out and being supported, as we have heard, by their employer. That is absolutely right, and that should continue. It is important that each sector has the scope, and we have given the Committee information on variances that each sector and each Minister can make to adjust to their workforce. It is enabling legislation, and there is a degree of discretion. It is not completely binding, and a 2% variance is permitted in the cost. So, I think it is reasonable. I will set out something in writing to maybe convince you a bit more because I do not think that I have done that.

**Mr Mitchel McLaughlin:** You are so kind. Thank you.

**Mrs Blathnaid Smyth (Department of Finance and Personnel):** DFP has a dual role, because we have a Treasury-like hat on and are safeguarding the purse strings, but we also have the wider public sector pensions policy. So, in checking and approving any scheme regulations, we ensure that they fall within the current wider public sector pensions policy.

**Mr Mitchel McLaughlin:** Those same kinds of safeguards and information would inform the Assembly if it was given a role in moving forward. I accept that those are the functions, but that information can be applied in different ways.

**Mrs G Nesbitt:** I suppose that it depends what the Assembly views as its role and what it wants to do business in. I would argue and contend that, because we are having our own primary legislation on pensions in Northern Ireland, this is the opportunity for the Assembly to look at the detail of that, become familiar with it and be assured, or otherwise, that that sets the right parameters and the right roles and responsibilities for the Department of Finance and Personnel, in its overall role, and with the Treasury role as well, which the Department has here. However, it must also have the balance right

between discretion and what other Ministers and other schemes can do. I argue for both, and I do not think that there is a conflict between both.

**Mr Cree:** Grace, I did not like your comment that the definition was putting something in and getting something out, because it matters to most people how much you put in and what you get out; it is an evaluation. I rather like the term "deferred pay", because that is what it really is. Will we not fall between the proverbial umpteen stools here by leaving flexibility in and having different schemes, albeit that some of those differences are very small? Why does the Department not take the opportunity to rationalise those schemes?

**Mrs G Nesbitt:** We have looked at the research by Lord Hutton and at what happened elsewhere. You could argue that we should have had a public sector pension scheme, and some thought that that was perhaps what Lord Hutton would do. As I said, it is important that schemes and workforces have flexibility to look at what they are doing. That is flexibility to a degree, because other high-level things will be constraining factors on them. We have got a balance and a reasonable way forward.

Could we look, as some colleagues in Wales are, at having a public service pension scheme for everybody and re-baselining? I think that that is what we are tending towards, in a sense, but I think that it would be very dramatic and, potentially, very costly to the public purse to have a single public service pension scheme in Northern Ireland. I think that we have got a reasonable compromise here. We have some high level principles and approaches and a framework that are going to apply to all parts of the public sector —

**Mr Cree:** What work have you done on deciding the costs that you refer to?

**Mrs G Nesbitt:** I have not done any work on that, so I cannot give you any costs. However, I imagine that unless you had the baseline at the highest and the best scheme, you would have to buy people out, because, as you said, pension is deferred pay, so people will have accrued rights.

One of the good things about this legislation, which has been honoured by Lord Hutton, is that there are significant transitional protections. As I have said, people who were 50 at April have a full 10 years, and there is a sliding scale of three and a half years before that. So, then there are the people who were 46 and a half at April. If you start looking at those sorts of things and start to make dramatic changes, those things tend to be costly. However, I have not done an exact piece of work on that, so I cannot give you a figure on it.

**Ms Coyle:** You are certainly right; there are complexities in all of these variations in the scheme. However, that cannot be avoided, because we have to consider the accrued rights that members have gained to date, and they should not lose those accrued rights. You could have people with reserved rights, or whatever, and that is where the complications come in. It is not as straightforward as broadlining it and saying that we are going to have one scheme, because it would be detrimental to a lot of people who may have built up service within their schemes to date.

**Mr Cree:** But you are tackling some major areas there that people are not happy about?

**Mrs G Nesbitt:** Yes, we are.

**Mr Cree:** You might have taken an opportunity to rationalise some of the smaller ones. Are new entrants to the Civil Service still joining the appropriate schemes?

**Mrs G Nesbitt:** No. I will clarify that. I apologise if I have not made that clear. Going forward, new entrants to every scheme will be joining new, if I can term it as that, career average schemes.

**Mr Cree:** I am talking about this point in time. If I want to join a particular Department, do I join that scheme?

**Mrs G Nesbitt:** Yes. If you were joining the Civil Service now, you would not be able to avail yourself of a final salary pension scheme, because our regulations changed, as did other schemes, by and large, a few years ago. They changed around 2008. We already have had reform of public service pension schemes, with the move to career average from final salary for new joiners, and, as has been mentioned by some of the contributors this morning, the actual increase in retirement age from 60 to

65. So, this is not a leap with everybody having to work to 65 or 68, because new joiners are already having to work until 65.

I can speak more authoritatively about the Civil Service, because I know that in more detail. A significant amount of people there, about one third, will be in the full 10 years' protection — we are all quite old, obviously — so they will be able to retire at 60. So, the impact on the economy that some of the other witnesses commented on is going to be delayed. It is not going to happen in 2015.

**Mr Cree:** This is my final point, Chair. If you move all of that along, Grace, when will there be one scheme?

**Mrs G Nesbitt:** There will be one scheme for the Civil Service in April 2015, but we must honour people's accrued rights, as I think it is right to do, so there will be people who will have transitional protection. That is going to take 14 and a half years to work out of the system. Each sector will have one scheme, but there will be people who will eventually retire or die —

**Mr Cree:** Retire, hopefully.

**Mrs G Nesbitt:** I was trying to avoid saying die. There will be other people who will be no longer active members of the scheme.

**Mr Cree:** That is a good way of putting it. Thank you.

**The Chairperson:** Clause 4 deals with the scheme manager. In what circumstances would it be necessary for the scheme manager to be different from the responsible authority?

**Mrs G Nesbitt:** Again, I will come back to the Committee with something in writing. We have left that more as a permissive clause in that they may be the responsible authority. We have another two sessions scheduled with the Committee to go through the Bill clause by clause, so I can give you more information on that then.

**The Chairperson:** Generally, how do clauses 4, 5, 6 and 7 compare to the existing arrangements?

**Mrs G Nesbitt:** In general, they are more robust and transparent. I can provide you with more detail on that. That was one of the key recommendations in Lord Hutton's report, that we should have better governance arrangements for pensions. The reason for that is that we should be able to sustain public service pensions and better manage pension liability.

**Mr Weir:** As we are on clause 5, I do not think that there has been a specific response to the Northern Ireland Local Government Association (NILGA) and the Northern Ireland Local Government Officers' Superannuation Committee (NILGOSC) in relation to clause 5(2). What is the Department's position with regard to that?

**Mrs G Nesbitt:** We may change the wording. It says, "must provide for the appointment". We want to give flexibility and recognise that there are different arrangements for local government, without taking up too much of your time. On reflection, we may change that to "may". That would then mean that, in the secondary legislation, it will —

**Mr Weir:** It will allow the scheme-specific type of thing.

**Mrs G Nesbitt:** That was always our intention. We will reflect on that, get legal advice and possibly change that.

**Ms Coyle:** NILGOSC requested that we change that from "must" to "may", and we saw no argument with it. An amendment will probably be made at Consideration Stage. It should not be a problem.

**The Chairperson:** With regard to clause 7 (Scheme advisory board), if the scheme advisory board is to advise on the desirability of changes to the schemes, do you feel that there needs to be a degree of independence? How do you assure yourselves of that?

**Ms Coyle:** Basically, clause 5 requires that the scheme provides a pension board; clause 7, that there is an advisory board. There should be no conflict of interest between the two. So, although there are certain concerns from local government that someone on the pensions board might also be on the advisory board, that should not be the case. There should be no conflict of interest. That is relatively clear.

The other thing is that we have recently been speaking to the Pensions Regulator. The regulator is now in the process of preparing guidance and a code of practice on how the pensions board and the advisory board will apply. They will consult on this guidance in Northern Ireland as well. That will be an opportunity for any of the schemes which have certain issues, particularly in relation to health, as we saw this morning, and, potentially, local government, to get into the detail of that.

Again, the secondary legislation process provides scope for the Departments to further refine the scheme level arrangements. That is something that they should not forget, because they can get into the minor issues and make slight amendments to suit their area, when it comes to the secondary legislation.

**The Chairperson:** You are saying that, if the Pensions Regulator raises issues, you will address them?

**Ms Coyle:** Yes. Where the regulator gives guidance, it should be adhered to. The schemes will all have a copy of the guidance and will be consulted on it. I would say that, once the Act has been passed, they will be consulted right away.

**The Chairperson:** Are there any other points, members, up to clause 7?

In regard to clause 8 (Types of scheme), what requirement is there for the provision in clause 8(1)(c), which enables the establishment of schemes other than "defined benefits" or "defined contributions schemes"? What does the word "other" mean there?

**Mrs Smyth:** It is just written in that way because it would be inappropriate to limit the options available to current and future generations of public service workers by removing any flexibilities. There are currently defined benefits and defined contribution schemes.

**Mrs G Nesbitt:** To put it in non-legal language, it is a catch-all clause, because the intention is that these reforms, and this framework, should apply to the public service.

**Mrs Smyth:** It is expected that, for the foreseeable future, all defined benefit schemes will be career average schemes. The Bill makes provision to protect the career average scheme design so that it will last for 25 years.

**Ms Coyle:** It applies enhanced processes for trade union side consultation and Assembly scrutiny if that is not the case. That is not to say that they can be applied without any consultation if they were to go beyond a career average revalued earnings (CARE) scheme design.

**The Chairperson:** Some have raised concerns about clause 8(5). They wonder why it is negative resolution rather than affirmative resolution. That point has already been covered in an earlier discussion.

Clause 9 concerns revaluation. Clause 9(2) states:

*"The change in prices or earnings to be applied ... is to be such percentage increase or decrease as an order made by the Department of Finance and Personnel".*

Does there have to be any consultation, or should there be some reference to consultation?

**Ms Coyle:** It would be a rare case, but affirmative procedure will apply if there is negative revaluation. It must be pointed out that, if there is any negative revaluation at any stage, which would be a very rare case, there will certainly be affirmative procedure in that type of scenario. For all other revaluations —

**The Chairperson:** Where is that at?

**Mrs G Nesbitt:** It is set out in clause 9(5)(a).

**The Chairperson:** Why the difference? There is an affirmative procedure for a percentage decrease, but, in any other case, it is negative resolution.

**Ms Coyle:** If it is not negative, it will obviously be positive for the member. It would not be appropriate to have to go through affirmative procedure in that scenario because, if it was negative procedure, it would certainly be discussed with the Assembly, but you would not probably have to go into the detail that you would if there was negative.

**The Chairperson:** To be devil's advocate, if there is going to be an added cost, that would be in the Assembly's interest as well.

**Mrs Smyth:** The negative procedure is considered to provide an appropriate degree of —

**Ms Coyle:** Yes; it will be discussed at Assembly level.

**Mrs Smyth:** It would be similar to the uprating of benefits in the social security administration.

**Ms Coyle:** That is dealt with via negative resolution as well. It is aligning with the pension increase under —

**Mrs Smyth:** Yes; under the Pensions Increase Act.

**Mr Cree:** We can fix that.

**The Chairperson:** Clause 9(6) states:

*"For the purposes of subsection (1) any gap in the person's pensionable service which does not exceed 5 years is to be disregarded."*

There were concerns about equality screening and the equality impact of the Bill. Some contributors argued that that would impact on women more than men given that there are gaps in the workplace due to five-year family breaks etc.

**Mrs G Nesbitt:** Five years is the normal amount of time that is generally used for the specific issue that you have raised. That is the normal benchmark in other policies that I am aware of from employment legislation.

**The Chairperson:** Have you sought any views on that from any particular groups?

**Ms Coyle:** There are more females than males in the public services, but the reason for that was an external factor; it was not the make-up of how the public service pensions were set up. It was screened out for that reason. We will get you more detail on that, but I think that that was the initial thinking behind that.

**The Chairperson:** Did you have any discussions with the likes of the Equality Commission about that?

**Ms Coyle:** Yes. When we did the policy screening, the Equality Commission agreed with our decision on the screening out of it at that time.

**The Chairperson:** Were you aware of any other concerns from any other groups?

Point 1

**Mrs G Nesbitt:** No. Nobody else raised any, to the best of my knowledge.

**The Chairperson:** OK. Members, anything else on clause 9? We come to clause 10 on pension age.

**Mr Girvan:** Chair, I appreciate that there is evidence here from a number of the unions in relation to pension age. One that is not included but was mentioned here this morning is the British Medical

Association (BMA). I appreciate that we have had a strong lobby from the Fire Brigades Union (FBU). Should any Department wish to make any variance to this, it would have to absorb any local changes that it would make. Is that correct?

**Mrs G Nesbitt:** Yes. It would have to absorb changes; that is the stance that we have had. Those changes could be absorbed in a number of ways. You may or may not be familiar with the slightly different stance that was taken in Scotland for firefighters. If you have not already got it, I can provide you with the details of what Scotland is doing with regard to firefighters. Basically, Scotland is looking at the accrual rate, so that people can leave earlier and not take such a hit in their pension. In secondary legislation, sectors will have the scope to do that. If they do that within the overall cost envelope of their scheme, that is OK. However, if they exceed that and decide to have — if I could just describe it very simply — a more generous arrangement on any of the variances that they wish to make, the stance that we have taken, and which was advised by Minister Wilson in his time, is that those costs would have to be met by that sector. So, there is scope within the overall cost envelope to vary it. There is also scope to go outside it. That brings with it a consequence for the funding for that sector. So, to answer your question: yes.

**Mr Girvan:** So, the protection of accrued rights is an issue. I am looking at what was presented this morning in relation to the BMA, where the proposal is to move from 65 to 68. If, for argument's sake, someone wished to take a reduction and take the three years, that could be a 5% reduction per year. Would that be the case?

**Mrs G Nesbitt:** I do not have the detail of the health service pension scheme. In the Civil Service, that would be our reduction rate and what people would have to do.

I will make a couple of general points about state pension age. As came out in the earlier session with the BMA, the retirement age for new workers to the public service has, over the past few years, increased in all sectors, generally from 60 to 65. For firefighters it increased from 55 to 60. I did give the dates of that to the Committee, and I can supply those again if you want. So, the increase in the age is not a new thing. I accept that linking most parts of the public service to state pension age is new. The reason for that was that it was a key recommendation for cost management going forward. So, it goes back to the financial sustainability of the pension schemes. Schemes will have scope within that to make arrangements so that people can choose to retire earlier and still have a pension to live on — maybe not as full a pension as if they had worked longer. Also, because we have the transitional protection, people have time to look at that. The move to career average and the increase in state pension age is not actually going to come into effect for people for some years to come. We have talked about private sector pensions. People could decide to take out that. They could look at buying added years. There are lots of flexibilities there. When it comes to capability, if people are not capable of doing the job, we do have provision for early retirement and medical retirement. Those things can all be looked at. I know that, in certain sectors, there are concerns about capability for firefighters and health professionals, and various reviews are going on. Those things can inform scheme design and specific secondary legislation going forward. If necessary, changes can be made.

**Mr Girvan:** I am happy enough with that.

I have one other point that I would like clarification on from the Department's point of view. Mention was made this morning of making a higher percentage contribution for the same outputs as another scheme. Is that down to the scheme?

**Mrs G Nesbitt:** Yes. It is down to the scheme, and Ministers for each scheme will have their own view on that. Again, if I just refer to the increased contributions that we are experiencing in public service pension schemes, one of the things which I would personally support is protecting those members who are lower paid. There was a tiered contribution for most of the schemes. Basically, people who are paid more pay more in contributions. I think that that is quite fair — not particularly fair, maybe, if you are one of those people who is paying more, but in the grand scheme of things, I think that it is fair and reasonable. At the minute with our final salary pension scheme, lower-paid people are subsidising those who are higher paid. I think that we have got it the wrong way round with regard to fairness and how we manage our workforce.

In going forward, yes — as someone said this morning — career average will level that out, in that the higher earners no longer have the huge advantage of their best last year and final salary with whatever may happen in your best last year out of three for your final salary. Therefore, it will level that out. It is a fairer system, particularly for those who do not have the opportunity or the scope,



within their particular job or career, for advancement. It is really up to each sector to decide who pays. Should what you pay in be totally influenced by what you get out, or is it reasonable in a scheme design for those people who are paid more to pay more into the pension scheme to help other people in that particular workforce or sector who are less well paid? That is a matter for secondary legislation, but there is a fairness in tiered contributions.

**The Chairperson:** Following on from Paul's point about age, obviously, there will be exceptional circumstances and early retirements, etc, which will be looked at individually.

**Mrs G Nesbitt:** Yes.

**The Chairperson:** However, there is not that degree of flexibility in the scheme. I do not see why there could not be more flexibility in the primary legislation regarding some of those issues so that there is that flexibility. There are a number of reports; the BMA raised the issue, and the FBU has also raised an issue about the report. That will factor into consideration of retirement age. I do not see why the flexibility — and the FBU has proposed an amendment for firefighters, which is reasonable, because it passes it down to the next level to be decided on. However, it is not saying that it should stay the same. I think that that would be a more common-sense approach, rather than putting it in primary legislation that it must be 60.

**Mrs G Nesbitt:** The difficulty is when you look at a particular workforce. I will touch on health first, but I will come back to the Fire Service. If we had flexibility for the health service pension scheme — I do not have the figures to hand, but I can get them if that would be helpful to the Committee. How many members of the health service pension scheme are doctors? How many of them work in A&E, or whatever situation? Are you going to say that, for the whole of the health service pension scheme — I am just trying to work through the logistics of this — there will be a reduced pension age, or are you going to say that this particular group of workers and not that particular group of workers will have a different age in the same pension scheme? That could be particularly divisive, and it would be difficult to make those rulings and those judgements. In the Civil Service pension scheme, we have prison officers, who would also contend — and evidence has been given — that they should have a different pension age. Again, that gets very difficult within a scheme, because we may have other members of our pension scheme, maybe even in our schedule 1 bodies that I alluded to earlier, who would say that a difference should be made for them. Therefore, if a particular sector wants to look at that, it is appropriate for them to do that in the secondary legislation.

Lord Hutton looked long and hard at the pension age, and he made exceptions. His view is that those are the only exceptions. It could get really difficult to decide whether to have a different age for the whole of the health service scheme or just parts of the health service scheme, for some workers. With regard to firefighters, the pension age actually changed to 60 some time ago. These reforms are not increasing it to 60; it is staying at 60. There may or may not be scope in that workforce for them to manage that by not doing front line firefighting, if I can describe it like that. And if there is not, it is really for that workforce to look at and see how they want to ease the transition, if they find that their workforce is failing on their capability and fitness tests. I think that the parameters that we have set should stay.

**The Chairperson:** The issue that I was focusing on was that of the firefighters, as opposed to the health service.

**Mrs G Nesbitt:** OK. That came up earlier.

**The Chairperson:** The difficulty for the Fire Service is that it has a lack of backroom staff. The police, obviously, have a much larger backroom staff, in terms of the percentage of its workforce. If a report comes out now and says that firefighters who are 60 and on the front line represent a percentage increase in the risk to the public, ultimately, we, as politicians, need to be in a position to respond to that. I do not think that this being in primary legislation gives us that assurance.

**Ms Coyle:** Just on the point that Grace has made, as the firefighters stand at the moment, I understand that those who came in from 2006 — that date may not be exactly right — have a retirement age of 60. Prior to that, it was something like 55. Already, you have a discrepancy within the Fire Service as regards retirement age. So again, if this were in secondary legislation, and we were discussing and consulting on it, would we look at those who previously had the 55 retirement age, and say that we need to make some kind of commitment to those people, because their pension

age was originally 55? We now have people who have had a retirement age of 60 since they came into the Fire Service. Do you degress with those and take them back to an earlier age? There are so many discrepancies within each scheme.

**The Chairperson:** And there are discrepancies, and that is the status quo, but ultimately we will have to make a decision based on both public safety and the pension arrangements, so that is a difficulty.

**Mrs G Nesbitt:** I was just checking my notes there. The retirement age for firefighters actually changed in April 2006, seven years ago. That was the view that was taken then, and implemented. Obviously, Lord Hutton looked at the various retirement ages that there were in each sector. If we are saying that, by and large, new entrants to the public sector who joined in two thousand and whatever could work a bit longer, then we have honoured those with that existing accrued right. I have said, in terms of having an earlier pension age, but it is difficult to argue that we should unwind and unpick that, where we have increased the pension age.

For firefighters, the age is 60. We are not proposing to increase that more. For other public service workers, by and large, it is from 60 to 65. I accept that that will go up with the increase in state pension age as well. If we start going back, we are unpicking what has been done before.

**Point 3** – Yes, if there is compelling evidence, from someone living in Northern Ireland, to say that this needs to be looked at in terms of fire safety and how we deal with that, that is different. However, I am aware of no major outcry in 2006 when the age was increased to 60. I am not sure why we would unravel that now. It is being looked at. It will be reviewed, and that gives me assurance that, if there is a real issue there, we can look at it. There will be flexibility within the scheme to look at that and manage the scheme costs as well.

**Point 4** { **Mr McCallister:** On that, the big concern is really whether it will fit in secondary legislation or be left up to the individual scheme for firefighters. It was completely unclear as to whether, if a firefighter took early retirement, say at 57, his pension would be downgraded by three years, until he is 60, or, indeed, depending on his age, whether there was 67 retirement or 68. Will that be worked out by the individual scheme? Can we give them some comfort?

**Mrs G Nesbitt:** This is primary legislation. I cannot emphasise that enough. So that would be very much a matter for each scheme to look at, as to how easy or comfortable they want to make it for people who, for whatever reason, are leaving a public service pension scheme early. They will be looking at how they can do that, in view of the needs of their workforce and what they are asking people to do, and also the overall cost and affordability of the scheme. So that is a matter for the secondary legislation for the scheme. I think that that is entirely appropriate.

**Mr McCallister:** To leave it in that?

**Mrs G Nesbitt:** To leave it in the primary legislation but to allow discretion for variances, which can be set out within the scheme-specific legislation, in response to the needs of the workforce or, indeed, reviewing that, as you say, as new research and new thinking come forward.

**Ms Coyle:** That was a success story in Scotland in relation to the Fire Service, because they eked that out. Most of the schemes at the moment have between a 4% and 6% reduction per year. I know that this was debated at last week's evidence session, too. Potentially, you could have a scheme saying that 5% is too much and it will consider 3%. In this particular scenario, where those people are working —

**Mr McCallister:** They were using 4% as an average, but they did not have an issue with the 4%. They certainly had a big issue if it was 4% to the state retirement age.

**Mrs Smyth:** It would be normal retirement age for the scheme, which would be legislated for at 60.

**Mr McCallister:** So you are saying that it would be 60?

**Mrs G Nesbitt:** Firefighters are one of the groups that are an exception to linking scheme retirement age with state pension age. I think the thinking is that that will reach 68, but it could potentially increase. Firefighters are one of the exceptions, so the retirement age for firefighters will be 60. Obviously, people will have transitional protection arrangements. That goes without saying, as I

explained earlier. Also, those people who were recruited after April 2006 will not actually see a change in their retirement age, because their retirement age will be 60, and they came in knowing that. Does that explain it?

**Mr McCallister:** It is a point that was raised, and I think it would make a huge difference. So you are telling me that the retirement age would be 60. If someone took retirement at 58, it could be —

*Point 5* – **Ms Coyle:** It would be 3% per year up to the age of 60, not up to the age —

**Mrs G Nesbitt:** Not up to the age of 67 or 68.

**Mr McCallister:** I think that will be of tremendous comfort to the Fire Brigades Union, because last week there was —

**Mrs G Nesbitt:** I would have thought that they would have known that, actually.

**Mr Weir:** On that specific point, I appreciate the answer. In many ways, the answers, then, are probably in Hansard, in that regard. I think it might be useful in dealing with John's point about giving that specific comfort if the Department was to formally produce a letter on that specific point to explain what the situation is. Then, when we are dealing with it in Consideration Stage, whether it is through the Chair or whatever, it may be useful for that to be read into the record.

**Mrs G Nesbitt:** I am happy to take the point, and we will set that out.

**Mr Weir:** That is OK. On a second, more general, point, I suppose what is being said is that, if there are those variations, it is probably best at a scheme-specific level on that side of things. Is the danger of naming particular groups or bodies on the face of it the concern from a practical point of view in terms of the complexity that it would engender into the legislation? To what extent is it also an issue of the law of unforeseen consequences in terms of any legal problems that may arise once you start putting in particular provisions for particular bodies, particularly if you are differentiating on the face of primary legislation in terms of specific schemes, or whether you leave it open? Mention was made of the wider bit. To be fair, I probably have more sympathy with the situation of the firefighters than perhaps some of the other cases that have been presented to us.

**Mr McCallister:** Very delicately put.

**The Chairperson:** What ones are you talking about?

**Mr Weir:** One wonders at the terrible problem of a lot of doctors suffering on £100,000 a year or more, but that is by the by. If you open up something on the face of primary legislation to try to cover specific situations, do you then get perhaps the other 96% of people on that specific scheme who are not covered by it taking some sort of court action and saying, "Well, actually, here is the same scheme on the face of the legislation; why am I not covered?" and trying to take legal action to open up the floodgates? Presumably it would be both those concerns, the practical and the legal.

**Mrs G Nesbitt:** It would, absolutely. Without repeating what I have said, I think that what we have struck here is a fair balance between the broad parameters at one level and at the other level, at the secondary stage, giving Ministers responsible for each scheme for their sector the flexibility to respond to the needs of their workforce, whatever they are. Within that there are safeguards, like medical retirement or whatever.

**Ms Coyle:** The NASUWT had issues with the age of retirement in its evidence session last week. That could go on; you could have certain groups of people in every one of the schemes coming and saying that they are unique in this particular area, so it would be a quagmire to try and put it into the Bill.

**Mr Weir:** Perhaps contradictory concerns have been raised over this. Last week, there was a concern that the impact on teachers would act as a blocking mechanism and that people would remain at the top end of things and young people would not get in. We then had evidence today from the BMA, which had the concern that too many people would opt for early retirement and get out, although curiously enough, that also seemed to get married in with consultants working to the age of 68, so

people were both leaving early and staying too late simultaneously. I am not quite sure how that works.

**Mrs G Nesbitt:** Obviously, people have personal choices to make, and being a member of a public service pension scheme gives you as an individual a fair degree of flexibility in when you want to retire.

**Mr Weir:** Presumably nobody is compelled to take part in these pension schemes; they could opt out.

**Mrs G Nesbitt:** Nobody is compelled to join our scheme. In other countries, you are compelled to join the scheme if you are a member of the public service, but we have not done that. If people do not want to pay in, they can leave. I can supply the Committee with evidence on opt-out rates if it would be helpful. I do not have that detail to hand today, but I can get it. We looked at opt-out rates, because it was one of the areas that we said that we would look at just generally going forward, with increased contributions. With year three of increased contributions scheduled to begin in April next year, the opt-out rate has been very low, and of those people who have opted out, very few said that they did so because of increased contributions. They tend to be younger people: perhaps it is their first job and they have just looked at the bottom line of their take-home pay and have not quite made an informed decision, but there has been no increase in opt-out rates because of increased contributions. I think that is because of the point that members have made, that public service pension schemes — even reformed ones — are still excellent pension schemes to be a member of, not least because of the governance around it, the confidence that you can have that it will actually pay out at the end of the day, and the employers' contribution, which is still going to be significant. If you would like more information on opt-outs, I can get it.

**The Chairperson:** On that point, in terms of opt-outs but more so in terms of uptake, the pension age has changed for new entrants; it is now 65. Have there been any trends or any change in the uptake?

**Mrs G Nesbitt:** No. The uptake is still very high.

**The Chairperson:** Do you have any figures on that?

**Mrs G Nesbitt:** I can get you some figures on that, but certainly in the case of the Civil Service, it is a few per cent of staff who are not members of the principal Civil Service pension scheme. It is in single figures.

**The Chairperson:** Is that the same for all the different areas?

**Mrs G Nesbitt:** I would need to check with other sectors, but I know that there has not been any increase in opt-outs from increased contributions. Well, it would be wrong to say "none", but very little — minimal amounts. However, I can get you more figures about opt-outs and the trends there.

**Ms Coyle:** Paul made a point about concerns that there would be opt-outs because of the increased contributions and now the wider reform, but, to date, there does not seem to have been any sign of that.

**Mr Girvan:** I have no concern about there being opt-outs; I was just wondering what the options were.

**Ms Coyle:** Even though people are paying higher contributions, they still know that to stay in the scheme, even the 2015 scheme, is beneficial to them.

**Mrs G Nesbitt:** Just to add to that; what I think has been helpful is that there have been changes in national insurance contributions, in tax bands and percentage tax paid, especially for lower-paid people. That has cushioned the increase in contributions, so people have been able to manage what they have to live on and still pay the increases in contributions. That is good, because we want people to stay in our pension scheme.

**The Chairperson:** Just one final point regarding clause 10. Clause 10(1)(a) is quite conclusive in that it links a person's pension age to state pension age. There would be concerns if that could knock out any consultation of the local Executive or Assembly in regard to that, because Westminster could ultimately make a decision to put it up to 70 and, because that is a new clause, as you said, that age

will automatically become 70. So, some flexibility in clause 10(1)(a), whereby it could be the state pension age or the pension age as applied through a certain scheme, might introduce a flexibility that would suit us as a devolved Assembly.

**Mrs G Nesbitt:** It depends on how you define "suit". If you have the flexibility and we do not keep pace, we could vary — indeed, we could come back and change our primary legislation if the Assembly desired. If we change that, that will have a cost, which Treasury will expect us to pay. That would be the first point.

On this specific issue, the Executive on, I think, 8 March 2012, made a decision and said specifically that they agreed that this would be the policy that would be adopted in Northern Ireland across the public service schemes. I can give you the wording of that decision if that would be helpful. This is already a matter that the Executive have considered and made a decision on the specific point about linking scheme pension age to state pension age.

**The Chairperson:** The state pension age rising to 68, or the state pension age at 65?

**Mrs G Nesbitt:** The state pension age would be rising, because the exact wording was that they would do and follow what happened in GB. Again, I can provide the Committee with that wording. So, the Executive would —

**The Chairperson:** But nothing has happened yet with regard to the rise to 68.

**Mrs G Nesbitt:** No, but the Executive made that decision in the knowledge that it would rise. It is common knowledge that state pension age will increase, so the Executive made that decision in that knowledge.

**The Chairperson:** To 65?

**Mrs G Nesbitt:** No, they knew that the state pension age would be increasing.

**The Chairperson:** Members, any other questions on clause 10? Clause 11? With regard to clause 12, "Employer cost cap", what rationale can the Department give for having the various powers of direction in regard to clause 12(3) and 12(4)? I think Hutton said that there would be a consultation process around the cost cap.

**Ms Coyle:** Yes. There will certainly be a 12-week consultation on implementing the directions and employer cost cap. We have already issued the HMT directions to the trade unions — NICICTU — for them to have a look at and come back and comment on them. We will certainly be carrying out our own consultation with the unions here in Northern Ireland.

**The Chairperson:** But that is not in the legislation, is it?

**Mrs Smyth:** The legislation states that the directions should be developed in consultation with the Government Actuary, but it is not covered by the legislation that there will be consultation with the trade union side on that.

**The Chairperson:** Could that be strengthened?

**Mrs G Nesbitt:** Yes, we could consider that. That is certainly happening in GB, even though it is not in their legislation.

**Mrs Smyth:** It would be seen as best practice.

**Ms Coyle:** I think it is not quoted in the Bill because directions are outside the legislation, but we could take a look at that.

**The Chairperson:** Any other points on clause 12? Clause 13 is "Employer contributions in funded schemes". Clause 13(4) states:

*"Where an actuarial valuation ... has taken place, a person appointed by the responsible authority is to report on whether the ... aims are achieved".*

How do you ensure the independence of that person and that assessment?

**Mrs G Nesbitt:** It would be understood that they obviously will be independent, because they will be appointed by the responsible authority, but we can consider enhancing that just to make that absolutely clear. I think it is operating from the premise that it is understood that people doing such work should not have a conflict of interest.

**Mrs Smyth:** Clause 13(7) says that they should be "appropriately qualified."

**Mrs G Nesbitt:** Clause 13(7) gives further clarification on that:

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

**The Chairperson:** Are there any other comments on clause 13?

Clause 13(6)(c) states:

*"the responsible authority may—*

*(i) require the scheme manager to report on progress in taking remedial steps;*

*(ii) direct the scheme manager to take such remedial steps as the responsible authority considers appropriate."*

Will that need to be amended to take account of circumstances in which the responsible authority is the scheme manager?

**Mrs G Nesbitt:** We will consider that, because the whole intention is that there is robustness and no conflict of interest. So, I will reflect on that.

**The Chairperson:** There are no questions on clauses 14 and 15. Clause 16 refers to the Department for Social Development (DSD). Why are the records kept at DSD, as opposed to DFP?

**Mrs Smyth:** It is same as the Department for Work and Pensions (DWP), in that DSD is in charge of the disclosure rights.

**The Chairperson:** There are no comments on clauses 17, 18, 19 and 20.

Where clause 21 is concerned, the NASUWT said that this should probably go through the Assembly. Do you have a view on that? This is similar to a point that was raised earlier.

**Mrs G Nesbitt:** We have covered those issues.

**The Chairperson:** Is there nothing further to add?

**Mrs G Nesbitt:** I cannot think of anything. I will try.

**The Chairperson:** There are no comments on clause 22.

Clause 23(2) states:

*"the authority must first consult the persons specified in subsection (3) with a view to reaching agreement with them."*

**Mrs G Nesbitt:** It sounds familiar. *[Laughter.]* I refer you to an evidence session from about a year ago.

**Mr Mitchel McLaughlin:** What does it mean in practice? We have heard the theory.

**Mrs G Nesbitt:** We will soon find out. It means what it says: you will consult with a view to reaching agreement. To be absolutely clear: it does not mean that you are required to reach agreement. When we had this discussion previously, we could not agree, but we had a very useful meeting. It means that there is not a union veto; I suppose that is the best way to describe it. I think that it is appropriate that there is not a union veto. To be fair, if the union were here, it would probably say that it means that there is a management veto. Again, this is about managing the whole scheme, and I think that the right balance has been struck.

**Ms Coyle:** We are required to report to the Assembly on our discussions.

**Mrs G Nesbitt:** Yes, it is very similar to the issue that we dealt with before.

**Mr Mitchel McLaughlin:** It sounded vaguely familiar.

**The Chairperson:** How do you define the term "significant adverse effects", which appears in clause 23(2)(a)?

**Mrs G Nesbitt:** I am tempted to say, "Good question." If we start trying to define that and put a form of words around it, it will get very difficult. We could just say, "an adverse effect". I think that the word "significant" is there to show that we are talking not about a few pounds but something substantial. I have no further definition to give you.

**Mr Girvan:** What is the definition of "substantial"?

**Mrs G Nesbitt:** I have no further definition to give you. This has been through the legal drafters. I do not know how we can elaborate or clarify that any more, but I welcome all contributions.

**Mr Girvan:** Significant or otherwise.

**The Chairperson:** There are no comments on clauses 24 to 31.

Clause 32(1) states:

*"A public body pension scheme established before the coming into force of this section may include—"*

It goes on to mention paragraphs (a) and (b). Is there a reason for the use of the word "may" rather than "must"?

**Mrs G Nesbitt:** I am not sure; I will come back to you in writing on that.

**The Chairperson:** There are no comments on clauses 33 to 37.

I will move now to the schedules.

**Mrs G Nesbitt:** Local government workers are defined in schedule 1. Hopefully, that will help with the point that came up.

**The Chairperson:** The section in the explanatory and financial memorandum on schedule 9 describes the fair deal provisions on the principal Civil Service pension scheme. Does that fair deal policy apply to other main schemes?

**Mrs Smyth:** Yes, fair deal will apply across all the schemes. It is slightly different for the local government scheme in that it followed the principles of it, but it will do its own consultation with trade unions on their plans for fair deal. However, the new fair deal policy will not come about in Northern Ireland until the Bill has received Royal Assent. Under the previous policy, people who transferred out of the public sector into the private sector were asked to have a pension scheme comparable to what they had. Under the new policy, they are allowed to stay in their existing public sector pension scheme. There is, therefore, more protection for them. Obviously, the longer that it takes us to get

Royal Assent for the Bill, the more risk there is for anybody in the public sector who is moving or being required to move.

**Mr Cree:** On that point, are you referring to a deferred pension situation?

**Mrs Smyth:** No, it is current pension provision.

**Mr Cree:** Are the employee and the employer contributing to it in the new arrangements?

**Mrs G Nesbitt:** Yes.

**Mr Cree:** So, it is continuing on; it is not a deferred pension. I suppose that I should know this, but do any of the schemes provide for additional voluntary contributions?

**Mrs Smyth:** Do you mean current public sector pension schemes or new schemes after 2015?

**Mr Cree:** Current ones.

**Mrs Smyth:** Yes, there are.

**Mr Cree:** Is it envisaged that that will carry on?

**Ms Coyle:** I think so.

**Mr Cree:** I do not think that it is mentioned anywhere. Is it?

**Mrs G Nesbitt:** We will check on that. My understanding —

**Ms Coyle:** I think that those provisions will continue on to the revised scheme.

**Mrs G Nesbitt:** We will check that out for you.

**Mr Cree:** The tax is paid anyway.

**The Chairperson:** Members, are there any other general points?

**Mr Cree:** No. Have a nice day.

**Mr Mitchel McLaughlin:** I think that that was helpful.

**Mrs G Nesbitt:** For a change. *[Laughter.]*

**Mr Cree:** We will see you in court.

**The Chairperson:** Just to add, Grace, we will be firing down about 100 questions for written answer.

**Mrs G Nesbitt:** And you will need a response by noon the next day.

**The Chairperson:** I will need a response by next week. Obviously, there is a tight timescale to stick to.

**Mr Cree:** There is a lot of information coming in for 18 October. That is just a few days away.

**The Chairperson:** When will the Committee receive a departmental response about the cost-benefit analysis of the non-alignment of the normal pension age (NPA) to the state pension age (SPA)?

**Mrs G Nesbitt:** Our view is that that is not required. We have looked at that, and we got an estimate from the Government Actuary's Department (GAD) to undertake that work. The estimate, which does not mean the final bill, is £15,000 plus VAT. It could take three to four weeks. It will —



**The Chairperson:** I am tempted to say that you could buy a few flagpoles for that.

**Mr Weir:** An awful lot.

**The Chairperson:** Do not get excited.

**Mrs G Nesbitt:** I could not possibly comment on that.

That will be based on the original work that the Government Actuary's Department conducted, which has not been totally accepted in some quarters. To be honest, I am reluctant to spend more public money on that. I think that we are focusing on the wrong issue and are looking at the cost of delay or the exact cost of not doing a particular thing. I think that that cost would be significant, and that was one of the reasons that Lord Hutton put that requirement in. As I said, it is also a decision that our Executive have made, and I cannot see any merit in commissioning that work. I think that our time and effort would be better spent looking at the details and the substance of the legislation. That is what we did this morning, and I think that that has been helpful. I know that it is difficult, but we should also try to get a better sense of and understanding about what can happen with the permissiveness from the primary legislation to the secondary legislation. I was going to say that I am not minded to do that, but I may be accused of quoting somebody else. However, my thinking is that we should not embark on that route. I do not think that it is the best use of public money, and I am also very conscious that the Executive have made that decision. I will not rehearse this, but we have been over the flexibilities that are in the secondary legislation to address that issue where there are particular concerns in a sector. If the Committee wishes —

**The Chairperson:** Is that the only reason, or are you afraid of the answers that might come back?

**Mrs G Nesbitt:** No, I am not afraid of the answer. I think that the answer will be another x amount of millions of pounds, and we will then end up debating the efficacy of the Government Actuary's Department doing it, whether they are independent and how robust its analysis was. I just think that that is taking us in the wrong direction, because I believe that we should be spending our time and effort looking at the substance.

I am not sure whether the Committee has any money and wants to commission the Government Actuary's Department or whether the unions want to commission it and pay for it. Obviously, that is a matter for you to consider.

**Mr Mitchel McLaughlin:** Now you are being provocative. *[Laughter.]*

**Mrs G Nesbitt:** I am just giving you a helpful suggestion.

**Ms Coyle:** A comment was made at last week's evidence session that we have already spent £37,000 —

**The Chairperson:** We could extend your consultation period to carry that out if you wish.

**Ms Coyle:** If we add another £15,000, I do not think that we are going to be very popular. That would take us beyond £50,000.

**Mrs G Nesbitt:** In all seriousness, there will be a cost to delay. I have a little aside, which I will give to lighten the moment. I was described by one of the contributors at an evidence session as a scratch on a phonographic record that causes the stylus to stay in the same groove and play the same words over and over again. That person thought that I was a stuck record. Maybe I should update that with, what is it — a stuck MP3 player or a CD player? The person was talking about my reference to the GAD cost of delay of £300 million a year.

I had never actually heard this before, but as the old saying goes, "I will take all cuts as compliments." I consider it important to remind members of the consequences of delay. From my time in education, which was a long time ago, repetition was a really useful learning tool to deploy in helping people to retain information. *[Laughter.]*

**Mr Mitchel McLaughlin:** That seems to prove his point.

**Mrs G Nesbitt:** You all remember the £300 million, so you have all passed the exam today. We have had no senior moments today.

**Mr Cree:** Is the £300 million still the same? Has it not changed today?

**Mrs Smyth:** It has not changed today. However, we could arrange that.

**Mrs G Nesbitt:** The union suggested that there could be a variation of £10 million for each scheme. I said that if it were helpful, I would present it as £250 million to £350 million, because there were five schemes.

**Mr Cree:** So, are you saying that there is flexibility in it?

**Mrs G Nesbitt:** Absolutely. There is built-in flexibility.

**Mr Mitchel McLaughlin:** It sounds as though you are actually saying that there was a margin of error of around 25%. Guesstimating is not the best way to actually —

**Mr Weir:** I think that the point, in many ways, is that, whether it is £250 million, £350 million or something in between, it is big money whatever way you do it.

**Mr Mitchel McLaughlin:** That is why I am not digging holes about it. *[Laughter.]* I am not sure about the guesstimating approach. However, there is no question that there is a significant financial penalty.

**Mrs G Nesbitt:** There is. We know that, if we can accept that, our efforts would be better spent actually looking at the detail of the legislation rather than spending more money to refine a guesstimate, estimate or whatever you want to term it — an assumption. Are there any other questions?

**The Chairperson:** No. We will let you go early. We have only an hour and 15 minutes left.

**Mrs G Nesbitt:** I will go back and do some more guesstimating, will I? Thank you for your time. I genuinely appreciate the Committee's efforts. I am conscious that we have given you an awful lot of information. Pensions is not the easiest subject to try to grapple with. We will pick up the points that were raised today and give you something back. If something is not clear — I am sure that it will not all be clear — we are obviously happy to come back. We are scheduled for another two sessions on 6 and 13 November to go through the clause-by-clause scrutiny. Thank you for your time today.

**The Chairperson:** Thank you.



**Department for  
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19 JUN 2013

Dear Matt,

Since my letter of 5 June, my officials have continued to meet with FBU officers about the issues raised in the Trade Dispute letter. I am now in a position to set out the Government's final offer in relation to the terms of the Firefighters' Pension Scheme 2015.

On employee contributions, I am content that 13.2% should be the employee contribution yield delivered across all of the Firefighters' Pension Schemes, not just the 2015 scheme. I have asked the Government Actuary's Department to project forward the pensionable pay bill to 2015, 2016 and 2017 to enable us to calculate the yield that will need to be delivered in the 2015 scheme in those respective years.

Based on the projections from GAD, we currently estimate that the employee contribution rate in 2015 will need to average 12.6% in 2015, 12.7% in 2016, and 12.8% in 2017 in order to deliver a 13.2% average across all of the Firefighters' Pension Schemes. These rates are based on a number of assumptions which will be reviewed when we consult on the employee contribution rate to apply in the 2015 scheme; that consultation will follow once the impact – including on opt-out – of the final year of contribution increases in 2014-15 has been reviewed. This will affect the contribution ratios in the 2015 scheme, which will not be fully known until the outcome of the valuation of the Firefighters' Pension Schemes which is due later this year.

Prior to the setting of the cost ceiling, the Government took into account a number of the points that the FBU raised on the underlying assumptions in the cost ceiling. This included changes to the ill-health retirement assumptions and the take up rate of commutation by scheme members, this was reflected in the cost ceiling when initially issued.

We have previously discussed the actuarial reduction terms, in particular the recommendation in Dr Williams' report to extend the enhanced actuarial reduction arrangements so that firefighters between 55 and 57 years of age would be able to access their pension early on improved terms compared to that set out in the Proposed Final Agreement. My proposal is to adopt Dr Williams' recommendation on early leavers, the outcome of which is that the actuarial reduction rate to be applied would be 21.8% at age 55, and 17.9% at age 56, using today's assumptions. The revised accrual rate would be 1/59.7<sup>th</sup>. This is an improvement on the terms set out in the Proposed Final Agreement, and also the

early retirement terms in the New Firefighters' Pension Scheme 2006 where the reduction at age 55 is around 40%, and at age 56 is around 37%.

I am also content to establish a Joint Working Party with the employers to examine some of the workforce management issues that you raise. The current, draft Terms of Reference for that group is:

*"The Joint Working Party note that pension age will undergo a separate, regular review.*

*"This Joint Working Party will:*

- consider aspects of the role that have been identified as the most physically intensive and how they impact upon an individual's ability and fitness to carry out their role over time;*
- examine future options and trends in respect of continued employment and develop a best practice guide."*

This final offer has been made on the basis that it addresses the majority of the FBU concerns. As such, it is conditional on the FBU membership agreeing to its terms. I would be grateful if you could provide me with your response by 12 July, ahead of the summer recess.

I am copying this letter, for information, to Roseanna Cunningham MSP, Minister for Community Safety and Legal Affairs in the Scottish Government, Lesley Griffiths AM, Minister for Local Government and Government Business in the Welsh Government, and Edwin Poots MLA, Minister for Health, Social Services and Public Safety in the Northern Ireland Executive.

**BRANDON LEWIS MP**

## PUBLIC SERVICE PENSIONS BILL

### COMMITTEE FOR FINANCE AND PERSONNEL

...

Clause 10(2) deals with the normal pension age (NPA) for members of the pension schemes for the uniformed services – firefighters, police and armed forces. It currently says that the normal pension age *must* be 60.

The DCLG's proposed Heads of Agreement for the Firefighters' Pension Schemes proposes that the normal pension age should be subject to regular review –

*“taking account of the economical, efficient and effective management of the fire service, the changing profile of the workforce and the occupational demands of, and fitness standards for, firefighting roles.”*

The Heads of Agreement also state that the review will be informed by independent research commissioned by the Firefighters' Pensions Committee. The research has been conducted and published by Dr Tony Williams, and he supports the FBU's view that an NPA of 60 is not workable.

The Bill as drafted pre-empts the implementation of the review by specifying the NPA as age 60. Clause 10(2) as drafted appears to prevent the Government acting upon it.

The Bill should be amended to allow the Minister the flexibility to specify a pension age below age 60 in scheme regulations, without requiring him to do so. The amendment should say that the NPA is to be set out in scheme regulations. This is the way in which the NPA is set at the moment, and does not change the status quo.

The Westminster Government said during the passage of the Westminster Bill through the House of Commons and the House of Lords that the Bill was nothing more than framework legislation, and gave sufficient flexibility to allow the setting of an NPA below age 60. For instance, Lord Newby said:

*This Bill is framework legislation. This is usually the case in the public service pension arena and, as such, a number of things are possible within the framework of the Bill that do not require amendments to primary legislation. I am, therefore, happy to repeat that if the Government decided that it would be appropriate for some or all of these workforces to be able to access an unreduced pension before normal pension age, there are ways that this change can be delivered using only secondary legislation<sup>1</sup>.*

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<sup>1</sup> Hansard, HL Deb 23 April 2013 Col. 1357

The FBU questions whether that is the case: as stated above the Bill as drafted says the NPA *must* be 60. The Westminster Government's device for permitting a lower NPA appears to be to allow the scheme regulations to say that members can retire early, as a matter of course, using the definition of the NPA set out in clause 10(5)(a). That says:

*"normal pension age", in relation to a person and a scheme, means the earliest age at which the person is entitled to receive benefits under the scheme (without actuarial adjustment) on leaving the service to which the scheme relates (and disregarding any special provision as to early payment of benefits on the grounds of ill-health or otherwise);*

(Emphasis added)

That is a disingenuous device. If the Bill is to permit the setting of an NPA below age 60 it should say so. Clause 10(2) should be amended by adding words to the final sentence such as:

*'... set in scheme regulations but must be no more than 60'*

The Committee should note that the minimum pension age would still be subject to HMRC requirements, and could not be below age 55 unless the individual concerned had an unrestricted right to retire below that age on both (i) 10 December 2003 and (ii) 5 April 2006.



Established 1918

## The Fire Brigades Union

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30 August 2013

Committee Clerk  
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BT4 3XX

Dear Sir/Madam

**RE: DFP COMMITTEE CONSULTATION PUBLIC SERVICE PENSIONS BILL**

Please find attached the Fire Brigades Union (FBU) response to the above consultation. The FBU has submitted a proposed amendment to Clause 10 (2) of the draft Bill which relates to Firefighters.

It would be useful from our point of view to re-iterate to the committee that the FBU has already submitted supporting evidence to them in the form of the following:

- Normal Pension Age Review – Firefighters – Williams Report
- Briefing Note on Williams Report
- FBU submission to DFP Committee via ICTU

We would also welcome the opportunity to present this and further evidence orally to the committee and would ask that this could be facilitated.

Yours sincerely

Jim Quinn  
Fire Brigades Union Secretary  
Northern Ireland



Established 1918

## The Fire Brigades Union

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12 April 2013

### **RE: FBU SUBMISSION - ICTU RESPONSE TO CONSULTATION ON REFORM OF PUBLIC SERVICE PENSIONS**

A key concern of the Fire Brigades Union (FBU) with the proposed Bill on Public Service Pension Reform is the imposition of a Normal Pension Age (NPA) of 60 for all Firefighters. A recent independent report commissioned by the Westminster Government broadly supports the concerns of the FBU and makes it clear that the majority of current Firefighters will not be fit enough to work to 60. It warns that in such cases, "the only option is to leave or have their contract terminated on capability grounds without early payment of pension<sup>1</sup>."

The report shows that based on actual information from four fire and rescue services that two thirds (66%) of those aged 55-60 are below the recommended fitness standard of 42 mL.kg<sup>-1</sup>.min<sup>-1</sup>. Many fire and rescue services' fitness policies, including the one used in Northern Ireland, utilise this recommended fitness level.

It also warns that "it is likely that a substantially larger proportion of women will find it hard to maintain fitness at the required level, leading to a disproportionate number becoming unfit for firefighting before age 60"<sup>2</sup>. The FBU is very concerned that the proposed changes will make it difficult, if not impossible to recruit and retain adequate numbers of female Firefighters within the Fire Service. We therefore believe that a full EQIA should be carried out.

The FBU believe that the evidence supports our concerns that the NPA of 60 is inappropriate.

Yours sincerely

Jim Quinn  
Regional Secretary  
Fire Brigades Union  
Northern Ireland

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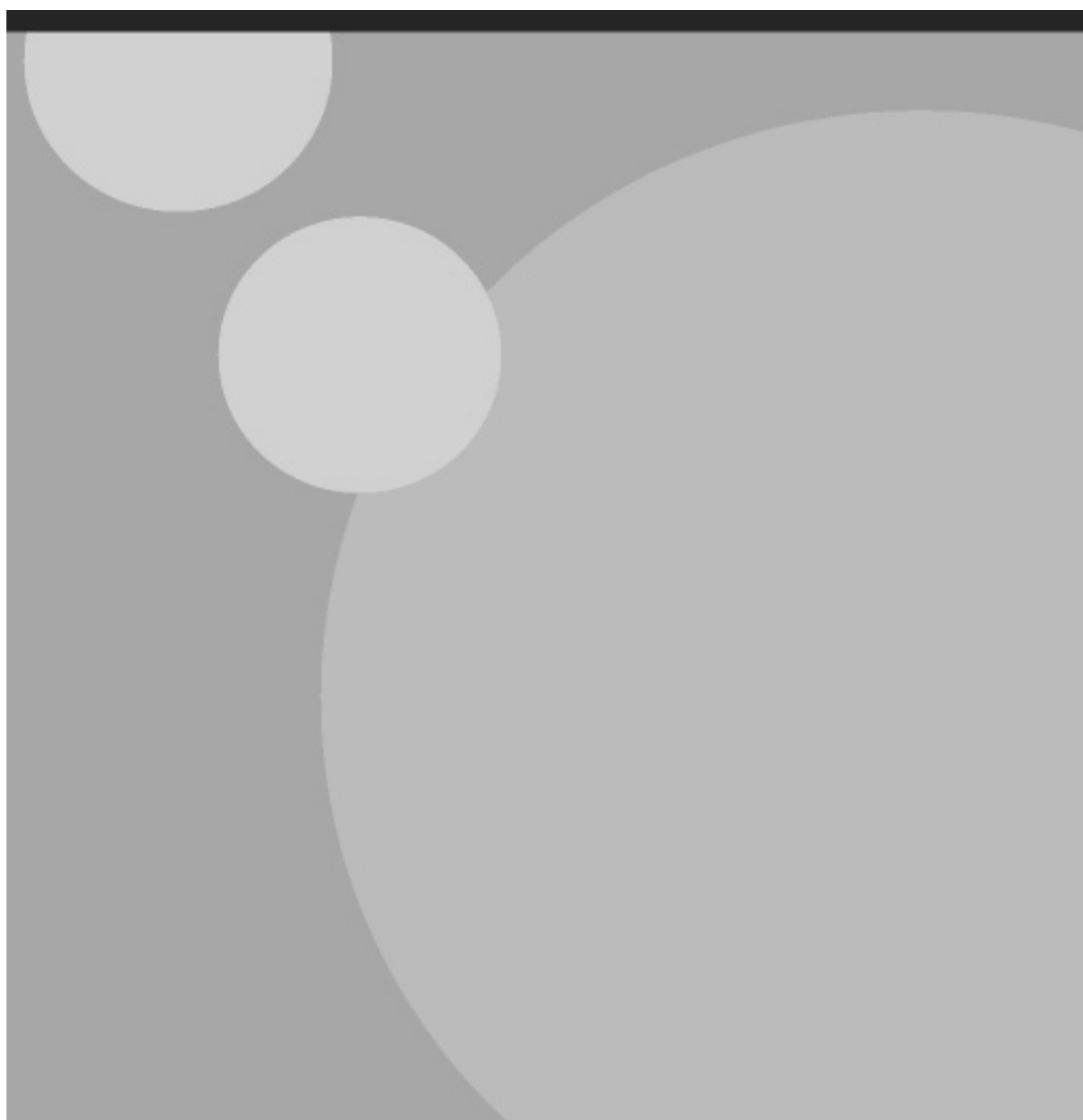
<sup>1</sup> Page 123 – 9.1.2 Normal Pension age for Firefighters- a review for the firefighters' pension committee – December 2012 – (Williams review)

<sup>2</sup> Page 138 – 11.5.5 Normal Pension age for Firefighters- a review for the firefighters' pension committee – December 2012 – (Williams review)





## **Firefighters' Pension Scheme: Heads of Agreement**





## **Firefighters' Pension Scheme: Heads of Agreement**

February 2012  
Department for Communities and Local Government

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## **Firefighters' Pension Scheme: Heads of Agreement**

This document sets out the Heads of Agreement on the parameters to govern scheme design for the Firefighters' Pension Scheme in England to be introduced from April 2015 ('the 2015 scheme'). This sets out the Government's final position on the main elements of scheme design, provided that agreement can be reached on the core parameters, which unions have agreed to take to their Executives following discussions. To that end, further work will take place over the coming weeks, and Executives can consult their members as appropriate. The Government and the fire service unions remain committed to maintaining a constructive dialogue during discussions over the detailed elements of the scheme design, and whilst members are being consulted. Discussion and analysis will take place through the Pension Reform Group for the Firefighters' Pension Scheme.

### *Accrued rights protection guarantee*

1. There will be full statutory protection for accrued rights for all members as follows:
  - a. all benefits accrued under final salary arrangements will be linked to the members' final salary, in accordance with the rules of the members' current schemes, when they leave the reformed scheme
  - b. full recognition of a members' expectation to double accrual for service accrued under the Firefighters' Pension Scheme 1992 ('the 1992 scheme'), so that a members' full continuous pensionable service upon retirement will be used to calculate an averaged accrual rate to be applied to service accrued under the 1992 scheme
  - c. members to be able to access their 1992 scheme benefits when they retire at that scheme's ordinary pension age (i.e. from age 50 with 25 or more years pensionable service), subject to abatement rules for that scheme. Pensionable service for the purpose of calculating the ordinary pension age will include any continuous pensionable service accrued under both the 1992 scheme and the 2015 scheme
  - d. members will continue to have access to an actuarially assessed commutation factor for benefits accrued under the 1992 scheme

### *Transitional protection*

2. There will be statutory based transitional protections for certain categories of members, as follows:
  - a. all active scheme members who, as of 1 April 2012, have 10 years or less to their current Normal Pension Age<sup>1</sup> will see no change in when they can retire, nor any decrease in the amount of pension they receive at their current Normal Pension Age. This protection will be achieved by the member remaining in their current scheme until they retire.
  - b. there will be a further 4 years of tapered protection for scheme members. Members who are up to 14 years from their current Normal Pension Age, as of 1 April 2012, will have limited protection so that on average for every month of age they are beyond 10 years of their Normal Pension Age, they gain about 53 days of protection. The last day of protected service for any member will be 31 March 2022. At the end of the protected period, they will be transferred into the new pension scheme arrangements. Further details on how the tapered protection will apply can be found at **Annex A**.

### *Main scheme design parameters for a new Firefighters' Pension Scheme*

3. The main parameters of the new scheme from 2015 are set out below. Discussions will continue on a number of areas set out in **Annex B**.
  - a. a pension scheme design based on career average revalued earnings
  - b. a provisional accrual rate of 1/58.7th of pensionable earnings each year, subject to further agreement on the outstanding issues set out in Annex B
  - c. there will be no cap on how much pension can be accrued
  - d. a revaluation rate of active members' benefits in line with average weekly earnings
  - e. pensions in payment and deferred benefits to increase in line with Prices Index (currently CPI)

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<sup>1</sup> The Normal Pension Age for the purpose of the Firefighters' Pension Scheme 1992 is age 55, for the New Firefighters' Pension Scheme 2006 it is age 60.

- f. average member contributions of 13.2% from April 2015, with some protection for new entrants. However, as announced by the Chief Secretary to the Treasury on 20 December, the Government will review the impact of the proposed 2012-13 contribution changes, including the effect of membership opt-outs, before taking final decisions on how future increases will be delivered in 2013-14 and 2014-15, and in the new scheme. Interested parties will have a full opportunity to provide evidence and their views to the Government as part of the review.
- g. flexible retirement from the scheme's minimum pension age of 55, built around the scheme's normal pension age of 60, with members able to take their pension from minimum pension age as follows:
  - for all active members who are aged 57 or more at retirement, 2015 scheme benefits taken before Normal Pension Age will be actuarially reduced with reference to the 2015 scheme's Normal Pension Age, rather than the deferred pension age
  - all other members will have their 2015 scheme benefits actuarially reduced on a cost neutral basis from the scheme's deferred pension age
- h. the Normal Pension Age will be subject to regular review. These reviews will consider the increasing State Pension Age and any changes to it, alongside evidence from interested parties, including unions and employers. It will consider if the Normal Pension Age of 60 remains relevant, taking account of the economical, efficient and effective management of the fire service, the changing profile of the workforce and the occupational demands of, and fitness standards for, firefighting roles
- i. this regular review will be informed by such research carried out by the Firefighters' Pension Committee, which will monitor and collate scheme data and experience
- j. late retirement factors for members retiring from active service to be actuarially neutral from Normal Pension Age
- k. a deferred pension age equal to the individuals' State Pension Age
- l. optional lump sum by commutation at a rate of £12 for every £1 per annum of pension foregone in accordance with HMRC limits and regulations
- m. abatement in existing schemes to continue

- 
- n. ill-health retirement benefits to be based on the arrangements in the 2006 scheme
  - o. all other ancillary benefits to be based on those contained in the 2006 scheme
  - p. members rejoining after a period of deferment of less than 5 years can link new service with previous service, as if they had always been an active member
  - q. members transferring between public service schemes would be treated as having continuous active service
  - r. an employer contribution cap and floor as set out below.
- 4. For the purposes of the reform design process for 2015, the Government previously set out the gross cost ceiling of 27.0% and the net cost ceiling of 13.8%. Attached at **Annex C** is a report by the scheme actuary verifying that the expected cost of the proposed scheme design above is within the cost ceiling. This report has been prepared in accordance with the advice in the Government Actuary's Department's report of 7 October 2011: Cost ceilings for scheme level discussions: Advice on data, methodology and assumptions, with suitable adaptations to take account of scheme specific circumstances.
  - 5. The scheme design parameters have been reviewed by HM Treasury who have agreed the approach taken to risk management.
  - 6. This agreement also covers arrangements for an employers cost cap and floor, and a 25 year guarantee (further information at **Annex D**).

## Annex A

### Tapered protection

1. Scheme members who, on 1 April 2012, are in the Firefighters' Pension Scheme 1992 and between the ages of 41 and 45, or are in the New Firefighters' Pension Scheme 2006 and between the ages of 46 and 50, will continue to accrue pension in their existing scheme on a tapered basis. They gain about 53 days of protection in their existing schemes for every month they are older than 41 years in the 1992 scheme and 46 years in the 2006 scheme, as set out in the table below. Once a members' tapered protection expires, they will be transferred into the new pension scheme.
2. Members will be able to take their 'Part 1' pension on retirement at their current Normal Pension Age for that scheme (or, in the case of members of the 1992 scheme, at their ordinary pension age), subject to abatement rules. After members are transferred into the new pension scheme, they will accrue their 'Part 2' pension in that scheme.

### Firefighters' Pension Scheme 1992

| Date of Birth |            | Age at 1 April 2012 |       | Days of protection | Age at end of protection |       |      |       | Date of end of protection |
|---------------|------------|---------------------|-------|--------------------|--------------------------|-------|------|-------|---------------------------|
|               |            |                     |       |                    | From                     |       | To   |       |                           |
| From          | To         | Year                | Month |                    | Year                     | Month | Year | Month |                           |
| 02/04/1967    | 01/05/1967 | 44                  | 11    | 2557               | 54                       | 11    | 55   | 0     | 31/03/2022                |
| 02/05/1967    | 01/06/1967 | 44                  | 10    | 2504               | 54                       | 8     | 54   | 9     | 06/02/2022                |
| 02/06/1967    | 01/07/1967 | 44                  | 9     | 2450               | 54                       | 5     | 54   | 6     | 14/12/2021                |
| 02/07/1967    | 01/08/1967 | 44                  | 8     | 2398               | 54                       | 3     | 54   | 4     | 23/10/2021                |
| 02/08/1967    | 01/09/1967 | 44                  | 7     | 2343               | 54                       | 0     | 54   | 1     | 29/08/2021                |
| 02/09/1967    | 01/10/1967 | 44                  | 6     | 2289               | 53                       | 9     | 53   | 10    | 06/07/2021                |
| 02/10/1967    | 01/11/1967 | 44                  | 5     | 2237               | 53                       | 6     | 53   | 7     | 15/05/2021                |
| 02/11/1967    | 01/12/1967 | 44                  | 4     | 2182               | 53                       | 4     | 53   | 5     | 21/03/2021                |
| 02/12/1967    | 01/01/1968 | 44                  | 3     | 2130               | 53                       | 1     | 53   | 2     | 28/01/2021                |
| 02/01/1968    | 01/02/1968 | 44                  | 2     | 2076               | 52                       | 10    | 52   | 11    | 05/12/2020                |
| 02/02/1968    | 01/03/1968 | 44                  | 1     | 2021               | 52                       | 7     | 52   | 8     | 11/10/2020                |
| 02/03/1968    | 01/04/1968 | 44                  | 0     | 1971               | 52                       | 5     | 52   | 6     | 22/08/2020                |
| 02/04/1968    | 01/05/1968 | 43                  | 11    | 1916               | 52                       | 2     | 52   | 3     | 28/06/2020                |



|            |            |    |    |      |    |    |    |    |            |
|------------|------------|----|----|------|----|----|----|----|------------|
| 02/05/1968 | 01/06/1968 | 43 | 10 | 1864 | 51 | 11 | 52 | 0  | 07/05/2020 |
| 02/06/1968 | 01/07/1968 | 43 | 9  | 1810 | 51 | 8  | 51 | 9  | 14/03/2020 |
| 02/07/1968 | 01/08/1968 | 43 | 8  | 1757 | 51 | 6  | 51 | 7  | 21/01/2020 |
| 02/08/1968 | 01/09/1968 | 43 | 7  | 1703 | 51 | 3  | 51 | 4  | 28/11/2019 |
| 02/09/1968 | 01/10/1968 | 43 | 6  | 1649 | 51 | 0  | 51 | 1  | 05/10/2019 |
| 02/10/1968 | 01/11/1968 | 43 | 5  | 1596 | 50 | 9  | 50 | 10 | 13/08/2019 |
| 02/11/1968 | 01/12/1968 | 43 | 4  | 1542 | 50 | 7  | 50 | 8  | 20/06/2019 |
| 02/12/1968 | 01/01/1969 | 43 | 3  | 1489 | 50 | 4  | 50 | 5  | 28/04/2019 |
| 02/01/1969 | 01/02/1969 | 43 | 2  | 1435 | 50 | 1  | 50 | 2  | 05/03/2019 |
| 02/02/1969 | 01/03/1969 | 43 | 1  | 1381 | 49 | 10 | 49 | 11 | 10/01/2019 |
| 02/03/1969 | 01/04/1969 | 43 | 0  | 1332 | 49 | 8  | 49 | 9  | 22/11/2018 |
| 02/04/1969 | 01/05/1969 | 42 | 11 | 1278 | 49 | 5  | 49 | 6  | 29/09/2018 |
| 02/05/1969 | 01/06/1969 | 42 | 10 | 1225 | 49 | 2  | 49 | 3  | 07/08/2018 |
| 02/06/1969 | 01/07/1969 | 42 | 9  | 1171 | 48 | 11 | 49 | 0  | 14/06/2018 |
| 02/07/1969 | 01/08/1969 | 42 | 8  | 1118 | 48 | 9  | 48 | 10 | 22/04/2018 |
| 02/08/1969 | 01/09/1969 | 42 | 7  | 1064 | 48 | 6  | 48 | 7  | 27/02/2018 |
| 02/09/1969 | 01/10/1969 | 42 | 6  | 1010 | 48 | 3  | 48 | 4  | 04/01/2018 |
| 02/10/1969 | 01/11/1969 | 42 | 5  | 957  | 48 | 0  | 48 | 1  | 12/11/2017 |
| 02/11/1969 | 01/12/1969 | 42 | 4  | 903  | 47 | 10 | 47 | 11 | 19/09/2017 |
| 02/12/1969 | 01/01/1970 | 42 | 3  | 851  | 47 | 7  | 47 | 8  | 29/07/2017 |
| 02/01/1970 | 01/02/1970 | 42 | 2  | 796  | 47 | 4  | 47 | 5  | 04/06/2017 |
| 02/02/1970 | 01/03/1970 | 42 | 1  | 742  | 47 | 1  | 47 | 2  | 11/04/2017 |
| 02/03/1970 | 01/04/1970 | 42 | 0  | 693  | 46 | 11 | 47 | 0  | 21/02/2017 |
| 02/04/1970 | 01/05/1970 | 41 | 11 | 639  | 46 | 8  | 46 | 9  | 29/12/2016 |
| 02/05/1970 | 01/06/1970 | 41 | 10 | 586  | 46 | 5  | 46 | 6  | 06/11/2016 |
| 02/06/1970 | 01/07/1970 | 41 | 9  | 532  | 46 | 2  | 46 | 3  | 13/09/2016 |
| 02/07/1970 | 01/08/1970 | 41 | 8  | 480  | 46 | 0  | 46 | 1  | 23/07/2016 |
| 02/08/1970 | 01/09/1970 | 41 | 7  | 425  | 45 | 9  | 45 | 10 | 29/05/2016 |
| 02/09/1970 | 01/10/1970 | 41 | 6  | 371  | 45 | 6  | 45 | 7  | 05/04/2016 |
| 02/10/1970 | 01/11/1970 | 41 | 5  | 319  | 45 | 3  | 45 | 4  | 13/02/2016 |
| 02/11/1970 | 01/12/1970 | 41 | 4  | 264  | 45 | 1  | 45 | 2  | 20/12/2015 |
| 02/12/1970 | 01/01/1971 | 41 | 3  | 212  | 44 | 10 | 44 | 11 | 29/10/2015 |

|            |            |    |   |     |    |   |    |   |            |
|------------|------------|----|---|-----|----|---|----|---|------------|
| 02/01/1971 | 01/02/1971 | 41 | 2 | 158 | 44 | 7 | 44 | 8 | 05/09/2015 |
| 02/02/1971 | 01/03/1971 | 41 | 1 | 103 | 44 | 4 | 44 | 5 | 12/07/2015 |
| 02/03/1971 | 01/04/1971 | 41 | 0 | 54  | 44 | 2 | 44 | 3 | 24/05/2015 |

### New Firefighters' Pension Scheme 2006

| Date of Birth |            | Age at 1 April 2012 |       | Days of protection | Age at end of protection |       |      |       | Date of end of protection |
|---------------|------------|---------------------|-------|--------------------|--------------------------|-------|------|-------|---------------------------|
|               |            |                     |       |                    | From                     |       | To   |       |                           |
| From          | To         | Year                | Month |                    | Year                     | Month | Year | Month |                           |
| 02/04/1962    | 01/05/1962 | 49                  | 11    | 2557               | 59                       | 11    | 60   | 0     | 31/03/2022                |
| 02/05/1962    | 01/06/1962 | 49                  | 10    | 2504               | 59                       | 8     | 59   | 9     | 06/02/2022                |
| 02/06/1962    | 01/07/1962 | 49                  | 9     | 2450               | 59                       | 5     | 59   | 6     | 14/12/2021                |
| 02/07/1962    | 01/08/1962 | 49                  | 8     | 2398               | 59                       | 3     | 59   | 4     | 23/10/2021                |
| 02/08/1962    | 01/09/1962 | 49                  | 7     | 2343               | 59                       | 0     | 59   | 1     | 29/08/2021                |
| 02/09/1962    | 01/10/1962 | 49                  | 6     | 2289               | 58                       | 9     | 58   | 10    | 06/07/2021                |
| 02/10/1962    | 01/11/1962 | 49                  | 5     | 2237               | 58                       | 6     | 58   | 7     | 15/05/2021                |
| 02/11/1962    | 01/12/1962 | 49                  | 4     | 2182               | 58                       | 4     | 58   | 5     | 21/03/2021                |
| 02/12/1962    | 01/01/1963 | 49                  | 3     | 2130               | 58                       | 1     | 58   | 2     | 28/01/2021                |
| 02/01/1963    | 01/02/1963 | 49                  | 2     | 2076               | 57                       | 10    | 57   | 11    | 05/12/2020                |
| 02/02/1963    | 01/03/1963 | 49                  | 1     | 2021               | 57                       | 7     | 57   | 8     | 11/10/2020                |
| 02/03/1963    | 01/04/1963 | 49                  | 0     | 1972               | 57                       | 5     | 57   | 6     | 23/08/2020                |
| 02/04/1963    | 01/05/1963 | 48                  | 11    | 1918               | 57                       | 2     | 57   | 3     | 30/06/2020                |
| 02/05/1963    | 01/06/1963 | 48                  | 10    | 1866               | 56                       | 11    | 57   | 0     | 09/05/2020                |
| 02/06/1963    | 01/07/1963 | 48                  | 9     | 1811               | 56                       | 8     | 56   | 9     | 15/03/2020                |
| 02/07/1963    | 01/08/1963 | 48                  | 8     | 1759               | 56                       | 6     | 56   | 7     | 23/01/2020                |
| 02/08/1963    | 01/09/1963 | 48                  | 7     | 1705               | 56                       | 3     | 56   | 4     | 30/11/2019                |
| 02/09/1963    | 01/10/1963 | 48                  | 6     | 1650               | 56                       | 0     | 56   | 1     | 06/10/2019                |
| 02/10/1963    | 01/11/1963 | 48                  | 5     | 1598               | 55                       | 10    | 55   | 11    | 15/08/2019                |
| 02/11/1963    | 01/12/1963 | 48                  | 4     | 1544               | 55                       | 7     | 55   | 8     | 22/06/2019                |
| 02/12/1963    | 01/01/1964 | 48                  | 3     | 1491               | 55                       | 4     | 55   | 5     | 30/04/2019                |
| 02/01/1964    | 01/02/1964 | 48                  | 2     | 1437               | 55                       | 1     | 55   | 2     | 07/03/2019                |
| 02/02/1964    | 01/03/1964 | 48                  | 1     | 1383               | 54                       | 10    | 54   | 11    | 12/01/2019                |

|            |            |    |    |      |    |    |    |    |            |
|------------|------------|----|----|------|----|----|----|----|------------|
| 02/03/1964 | 01/04/1964 | 48 | 0  | 1332 | 54 | 8  | 54 | 9  | 22/11/2018 |
| 02/04/1964 | 01/05/1964 | 47 | 11 | 1278 | 54 | 5  | 54 | 6  | 29/09/2018 |
| 02/05/1964 | 01/06/1964 | 47 | 10 | 1225 | 54 | 2  | 54 | 3  | 07/08/2018 |
| 02/06/1964 | 01/07/1964 | 47 | 9  | 1171 | 53 | 11 | 54 | 0  | 14/06/2018 |
| 02/07/1964 | 01/08/1964 | 47 | 8  | 1118 | 53 | 9  | 53 | 10 | 22/04/2018 |
| 02/08/1964 | 01/09/1964 | 47 | 7  | 1064 | 53 | 6  | 53 | 7  | 27/02/2018 |
| 02/09/1964 | 01/10/1964 | 47 | 6  | 1010 | 53 | 3  | 53 | 4  | 04/01/2018 |
| 02/10/1964 | 01/11/1964 | 47 | 5  | 957  | 53 | 0  | 53 | 1  | 12/11/2017 |
| 02/11/1964 | 01/12/1964 | 47 | 4  | 903  | 52 | 10 | 52 | 11 | 19/09/2017 |
| 02/12/1964 | 01/01/1975 | 47 | 3  | 851  | 52 | 7  | 52 | 8  | 29/07/2017 |
| 02/01/1965 | 01/02/1965 | 47 | 2  | 796  | 52 | 4  | 52 | 5  | 04/06/2017 |
| 02/02/1965 | 01/03/1965 | 47 | 1  | 742  | 52 | 1  | 52 | 2  | 11/04/2017 |
| 02/03/1965 | 01/04/1965 | 47 | 0  | 693  | 51 | 11 | 52 | 0  | 21/02/2017 |
| 02/04/1965 | 01/05/1965 | 46 | 11 | 639  | 51 | 8  | 51 | 9  | 29/12/2016 |
| 02/05/1965 | 01/06/1965 | 46 | 10 | 586  | 51 | 5  | 51 | 6  | 06/11/2016 |
| 02/06/1965 | 01/07/1965 | 46 | 9  | 532  | 51 | 2  | 51 | 3  | 13/09/2016 |
| 02/07/1965 | 01/08/1965 | 46 | 8  | 480  | 51 | 0  | 51 | 1  | 23/07/2016 |
| 02/08/1965 | 01/09/1965 | 46 | 7  | 425  | 50 | 9  | 50 | 10 | 29/05/2016 |
| 02/09/1965 | 01/10/1965 | 46 | 6  | 371  | 50 | 6  | 50 | 7  | 05/04/2016 |
| 02/10/1965 | 01/11/1965 | 46 | 5  | 319  | 50 | 3  | 50 | 4  | 13/02/2016 |
| 02/11/1965 | 01/12/1965 | 46 | 4  | 264  | 50 | 1  | 50 | 2  | 20/12/2015 |
| 02/12/1965 | 01/01/1966 | 46 | 3  | 212  | 49 | 10 | 49 | 11 | 29/10/2015 |
| 02/01/1966 | 01/02/1966 | 46 | 2  | 158  | 49 | 7  | 49 | 8  | 05/09/2015 |
| 02/02/1966 | 01/03/1966 | 46 | 1  | 103  | 49 | 4  | 49 | 5  | 12/07/2015 |
| 02/03/1966 | 01/04/1966 | 46 | 0  | 54   | 49 | 2  | 49 | 3  | 24/05/2015 |

## **Annex B**

### **Areas for further discussion**

1. The follow items remain to be discussed in detail with fire service trades unions and employers:
  - a. contribution rates and structure in the new firefighters' pension scheme, and the distribution of years 2 and 3 of planned increases in the current schemes. This will follow the outcome of the review into membership opt outs following 2012/13 increases in contributions.
  - b. contribution rates to be paid by members benefiting from the transitional protections
  - c. a detailed timetable, terms of reference, and process for reviewing the Normal Pension Age
  - d. a process for authority initiated early retirement from age 55 in the interests of the economical, efficient and effective management of the fire service
  - e. any issues on equality considerations that the unions or employers may raise.

## **Annex C**

### **Verification report from the Government Actuary's Department**



## **Firefighters' Pension Arrangements Verification of scheme-specific proposals**

Date: 9 February 2012

Author: Ian Boonin FIA



## Review of the Firefighters' Pension Arrangements – Verification of scheme-specific proposals

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## Review of the Firefighters' Pension Arrangements – Verification of scheme-specific proposals

### 1 Introduction

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- 1.1 This report has been prepared by the Government Actuary's Department (GAD) in its capacity as actuarial advisor to the Department for Communities and Local Government (DCLG) in connection with the Firefighters' Pension Arrangements in England (FPA or "the Scheme").
- 1.2 This report contains our advice on verifying that the new scheme design is within the cost ceiling and sets out the data, methodology and assumptions used in determining the value of the Reference Scheme and the new scheme design.
- 1.3 I understand that DCLG will forward this report to HM Treasury (HMT).
- 1.4 The data, methodology and assumptions and new scheme design described in this report are subject to approval by HMT, based on advice from GAD.
- 1.5 This report follows our normal quality processes for work conducted on public service pension matters.<sup>1</sup>

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<sup>1</sup> The GAD Statement of Understanding [http://www.gad.gov.uk/Documents/Occupational%20Pensions/GAD\\_Statement\\_of\\_Understanding\\_v\\_1.1\\_Dec\\_2011.pdf](http://www.gad.gov.uk/Documents/Occupational%20Pensions/GAD_Statement_of_Understanding_v_1.1_Dec_2011.pdf) sets out the standards which the Department currently applies for any work carried out in this area.





## Review of the Firefighters' Pension Arrangements – Verification of scheme-specific proposals

### 2 Verification Statement

- 2.1 The Minister for the Fire Service wrote to the fire service unions on 8 December 2011 setting out the gross cost ceilings for the firefighters' pension arrangements. The gross cost ceiling is the scheme specific contribution rate required to provide the Government's preferred design (the "Reference Scheme"). The terms of the Reference Scheme were set out in that letter. The letter set out the following cost ceiling for the Firefighters' Pension Arrangements:

| Gross Cost Ceiling | Employers | Employees |
|--------------------|-----------|-----------|
| 27.0%              | 13.8%     | 13.2%     |

- 2.2 Following scheme level discussions, the Secretary of State for Communities and Local Government has set out the new scheme design for the FPA for service from 1 April 2015. The new scheme design is attached at Appendix A.
- 2.3 The Government Actuary's Department provided advice to HMT on cost ceilings for scheme level discussions in the note of 7 October 2011: Cost Ceilings for scheme level discussions: Advice on data, methodology and assumptions. Section 8 of that note provided advice on verifying that new scheme designs are within the cost ceiling. This report has been prepared in accordance with the advice outlined in the 7 October 2011 report and subsequent HMT instructions (see appendix C).
- 2.4 I have compared the cost of the new scheme design set out in Appendix A with the Reference Scheme, and concluded that the new scheme design is within the required cost ceiling. This conclusion is subject to the comments below.
- 2.5 The conclusion in 2.4 is dependent on the data, methodology and assumptions adopted. These are set out in Section 3.
- 2.6 The data, methodology, assumptions and new scheme design described in this report are subject to approval by HMT, based on advice from the Government Actuary's Department. HMT have confirmed that they are content.
- 2.7 The costs of both the new scheme design and the Reference Scheme will change over time. I have considered these possible changes in the scheme costs and conclude that, allowing for this effect, the cost of the new scheme design set out in Appendix A remains within the cost of the Reference Scheme when assessed on the revised assumptions discussed in 3.4 and 3.6. This comparison is discussed in section 5.
- 2.8 Limitations of this advice are described in section 6.



## Review of the Firefighters' Pension Arrangements – Verification of scheme-specific proposals

### 3 Data, methodology and assumptions

- 3.1 This section sets out the data, methodology and assumptions used for the comparison.
- 3.2 The cost ceilings were set in accordance with the data, methodology and assumptions set out in GAD's notes:
  - > Review of the Firefighters' Pension Scheme (England): Assessment of cost ceiling and scheme specific proposals: Draft cost ceilings – results dated 17 January 2012, which referred to:
  - > Review of the Firefighters' Pension Scheme (England): Assessment of cost ceiling and scheme specific proposals: Data, methodology and assumptions dated 11 August 2011.
- 3.3 As required in paragraphs 8.2 to 8.10 of the GAD advice of 7 October 2011, I have considered whether the data, methodology and assumptions used to calculate cost ceilings will be appropriate to provide a fair comparison between the costs of the new scheme design set out in Appendix A with the Reference Scheme.
- 3.4 The gross cost ceiling outlined in 2.1 above assumed that all members retired on reaching age 60. No allowance was made for early or late retirements. The new scheme design allows for the early retirement terms of members who retire from active service at age 57 and above described in Appendix A.
- 3.5 In order to provide a fair comparison it is necessary to allow for early retirements in assessing the cost of the new scheme design set out in Appendix A.
- 3.6 Consequently HMT have requested that:
  - > The Reference Scheme should be reassessed allowing for the early retirement of half of the unprotected ex-FPS 1992 members at age 52, on terms consistent<sup>2</sup> with the current FPS 1992 scheme. The remaining unprotected ex-FPS 1992 members should be assumed to remain in the scheme.
  - > We should assume that the introduction of the revised early retirement terms will result in the unprotected ex-FPS 1992 members who would have retired at 60 instead retiring at 57. In the short-term, other members (including all ex-NFPS 2006 members) should be assumed to have the same retirement pattern as in the Reference Scheme.
  - > In the long-term it should be assumed that the revised early retirement factors will lead to a change in behaviour and 25% of members in active service reaching age 57 will be assumed to retire immediately.
  - > In addition members who were assumed to withdraw from the scheme between ages 57 and 60 should instead be assumed to take early retirement at the age at which they would have deferred.
- 3.7 These revised assumptions are used to assess the cost of the new scheme design set out in Appendix A and the Reference Scheme. Note that the contribution rate required for the Reference Scheme using these revised assumptions will differ from the original cost ceiling, and so the cost ceiling outlined in 2.1 above does not play any direct role in the comparison.

<sup>2</sup> There are no early retirement factors in the FPS 1992.



## Review of the Firefighters' Pension Arrangements – Verification of scheme-specific proposals

- 3.8 As a result of the revised early retirement terms, the FPS 1992 liabilities may be expected to increase. As requested by HMT we have assumed that the FPS 1992 past service liability will increase by an amount equivalent to assuming that half of all unprotected ex-FPS 1992 members will change their behaviour to retire at age 57 (three years earlier than they would have otherwise done). It has been assumed that the half of members with the most amount of FPS 1992 scheme service retire at age 52, and the half with the least amount of FPS 1992 scheme service remain in the scheme. I have assumed that this is equivalent to 65% of the pre-2015 liability of unprotected ex-FPS 1992 members relating to retirements at age 52.
- 3.9 After allowing for this past service cost, the cost of the proposed scheme remains within the revised cost ceiling.
- 3.10 No allowance has been made for any tapering of the ten-year protection; members who are subject to tapering have been treated as unprotected members.

### Summary of data, methodology and assumptions:

- 3.11 The membership data used to assess the cost of the Reference Scheme and the new scheme design outlined in Appendix A is the most recent full extract of membership data (data as at 31 March 2011) and is summarised in Appendix B.
- 3.12 This data has been validated and some minor adjustments have been made. It is my opinion that the membership data is suitable for the purposes of this report.
- 3.13 We have assumed that the profile of the membership as at 2015 is unchanged from 2011, except that 39% of the salary of unprotected scheme members is assumed to relate to ex-FPS 1992 members who will not benefit from protection.
- 3.14 The methodology used to determine the value of the Reference Scheme and the new scheme design is the standard actuarial methodology known as the Projected Unit Method with a one year control period.
- 3.15 The key assumptions used to determine the relevant costs are:
- > retirement as discussed above.
  - > a real discount rate of 3% pa in excess of CPI in line with the current SCAPE discount rate
  - > a nominal discount rate of 5% pa
  - > earnings increases of 4 ¼ % pa
  - > CPI increases of 2% pa
  - > improvements in post-retirement life expectancy in line with the ONS 2008-based principal population projections
  - > proportion of pension commuted in exchange for a lump sum of 55% of HMRC limits.
  - > other demographic assumptions, set as best estimates.



## Review of the Firefighters' Pension Arrangements – Verification of scheme-specific proposals

### **4 Sensitivity analysis**

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- 4.1 The conclusion in Section 2.4 is sensitive to the data, methodology and assumptions used.
- 4.2 Given the proposed pension scheme design, the conclusion in Section 2 is particularly sensitive to the following
  - 4.2.1 Age retirement assumptions: The figures provided in this report have been based on the assumption that half of unprotected ex-FPS 1992 and approximately 25% of new entrant active members will retire three years earlier as a result of the introduction of the revised early retirement terms but that no other members will change their behaviour. If a different spread of early retirements were assumed between ages 55 and SPA then the affordable accrual rate may be higher or lower. We have assumed that all benefits have to be drawn from all schemes at the same time.
  - 4.2.2 Withdrawal rates: The new scheme design is expected to be more favourable to those members who remain in service until age 57 than to those who leave before then relative to the Reference Scheme. Thus if a different rate of withdrawals before age 57 were assumed, then the affordable accrual rate may be higher or lower .
- 4.3 The National Audit Office has noted that the cost of public service pensions, as a proportion of GDP, will rise if GDP growth is permanently lower than expected. The conclusion is sensitive to the assumed rate of earnings growth in excess of inflation. However, the impact of this sensitivity will be very much smaller than changes to the assumed age retirement and withdrawal rates.



## Review of the Firefighters' Pension Arrangements – Verification of scheme-specific proposals

**5 Comparisons of costs in the longer term**

- 5.1 Paragraphs 8.21 to 8.23 of GAD's note of 7 Oct 2011 stated that if any benefit design options are proposed in which the comparison of costs differs in the short term and the long term, then HM Treasury could consider the issues arising on a case-by-case basis.
- 5.2 The data used for the comparison is based on membership data as at 31 March 2011.
- 5.3 HMT have specified that the comparison should allow for the likely increases in average member age due to the increased pension ages.
- 5.4 The future membership age profile is uncertain. For simplicity, I have performed a comparison for the current membership with average age increased by  $(60 - \text{average retirement age}) / 2$ .
- 5.5 The current average retirement age of the scheme is approximately 52 years. I have therefore assumed that all current members are 4 years older than included in the membership data. In order to provide a fair comparison with the long term cost of the scheme I have assumed a State Pension Age of 68 for all members in both the Reference Scheme and the new scheme design.
- 5.6 I have concluded that, allowing for this effect, the cost of the new scheme design set out in Appendix A remains within the cost of the Reference Scheme when valued on the early retirement pattern discussed in 3.4 and 3.6 above.



## Review of the Firefighters' Pension Arrangements – Verification of scheme-specific proposals

### 6 Limitations

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- 6.1 A number of limitations apply to the comparisons made and the conclusions reached in this report. These are described below.

#### Verification statement

- 6.2 The purpose of this report is to provide HMT with the requested statement verifying that the cost of providing the new scheme structure is within specified cost limits.
- 6.3 This report has been produced on the basis of the comparisons requested by HMT as we understand them, namely:
- > On an ongoing basis comparing the Reference Scheme with the new scheme structure allowing for the proposed change in assumptions outlined in 3.4 and 3.6
  - > On a long term basis comparing the impact of an increase in the average age of the scheme membership
  - > Sensitivity testing in accordance with assumptions directed by HMT.
- 6.4 The costs compared for this report will inevitably differ from the ultimate costs of the new scheme and Reference Scheme, for reasons such as:
- > the membership data used to calculate the cost will differ from the actual scheme membership to which the new scheme will apply in future. The relative weighting of older and younger members in future may impact on how the proposed and Reference schemes compare in the longer term.
  - > the outturn will differ from the assumptions made. In particular the current assumed retirement and withdrawal rates may not occur in practice.

The above list is not exhaustive.

- 6.5 Some of the assumptions adopted are different between the Reference Scheme and the new scheme. Since only one scheme will be implemented in practice, it will not be possible to determine how close the assumption adopted for a scheme design that is not implemented would have been to actual experience.

#### Data, methodology and assumptions

- 6.6 The costs being compared are sensitive to the data, methodology and assumptions adopted.
- 6.7 However the purpose of the comparisons is to verify that the new scheme structure can be provided within the cost limits set relative to the Reference Scheme. The significance of the data, methodology and assumptions used to determine the comparable costs therefore depends on what benefit variations are considered.
- 6.8 As outlined in 6.4 above changes in the scheme membership or the assumed rates of retirement or withdrawal from service may result in an alternative conclusion being drawn if the comparison had been made at some future time.
- 6.9 We have not made any allowance in our calculations for the changes in State Pension Age that were announced in the Autumn Statement on 29 November 2011. Any future announcements of changes in the State Pension Age will affect the costs of the Scheme.



## Review of the Firefighters' Pension Arrangements – Verification of scheme-specific proposals

### Calculations

- 6.10 Some of the calculations undertaken for the purposes of this document have been based on approximate methods. I do not expect this to materially affect the accrual rate of a scheme design that will pass the tests set out by HM Treasury.

### Benefits

- 6.11 The 'Reference Scheme' set out by HM Treasury and the new scheme design do not specify the full detail of every aspect of the benefit structures. Where there is scope for interpreting what benefits the 'Reference Scheme' of new scheme design includes, the calculations value benefits which are consistent with the recommendations of Lord Hutton's Independent Public Service Pensions Commission and in line with the scheme's current provisions. The approach taken in determining the draft cost ceilings is outlined in our report *Review of the Firefighters' Pension Scheme (England): Assessment of cost ceiling and scheme specific proposals: Data, methodology and assumptions dated 11 August 2011*.

### Third party reliance and liability

- 6.12 This report has been prepared for the Department for Communities and Local Government. I am content for the Department to release this report to third parties (including HM Treasury, other public service schemes, trades unions and parliament), provided that:
- > it is released in full
  - > the advice is not quoted selectively or partially, and
  - > GAD is identified as the source of the report
- 6.13 Third parties whose interests may differ from those of the Department for Communities and Local Government should be encouraged to seek their own actuarial advice where appropriate.
- 6.14 This report has been provided to the Department for Communities and Local Government for the purpose of providing HMT with verification of the new scheme structure for the FPA post 2015. No person other than the Department for Communities and Local Government or third party other than HMT is entitled to place any reliance on the contents of this report, except to any extent explicitly stated herein, and GAD has no liability to any other person or third party for any act or omission taken, either in whole or in part, on the basis of this report.



## Review of the Firefighters' Pension Arrangements – Verification of scheme-specific proposals

### Appendix A: New scheme design

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A.1 The new scheme design is a Career Average Revalued Earnings (CARE) pension scheme which includes the following features:

- a) A normal pension age of 60 (and a deferred pension age of State Pension Age)
- b) Revaluation of past CARE service for active members in line with earnings
- c) Pensions accrue at a rate of 1/58.7 for each year of service
- d) Early retirement reduction factors for retirement from active service from age 57 based on the period to normal pension age rather than the period to deferred pension age. Early retirement reduction factors for all other retirements based on the period to deferred pension age.
- e) Pensions in payment and in deferment indexed in line with prices<sup>3</sup>
- f) No fixed lump sums, optional commutation, with a 12:1 factor for converting pension to lump sum.
- g) Ancillary benefits (ill-health, death and survivors benefits) that match the current provisions that are currently available to new members (i.e. a lower tier ill health pensioner receives an unreduced CARE pension; a partner receives same proportion of member's pension as now)
- h) Members rejoining after a period of deferment of less than 5 years can link new service with previous service, as if they had always been an active member (so previous accruals are indexed by earnings for that period of deferment)
- i) Members transferring between public service schemes would be treated as having continuous active service (which would include those transferring between schemes who had rejoined public service after a gap of less than 5 years)

Members of the Firefighters' Pension Scheme 1992 on 1 April 2012 who are aged 45 or over on that day and members of the New Firefighters' Pension Scheme 2006 on 1 April 2012 who are aged 50 or over receive protection and are able to continue accruing benefits in their current scheme. Members of the Firefighters' Pension Scheme 1992 on 1 April 2012 who are aged 41 or over on that day and members of the New Firefighters' Pension Scheme 2006 on 1 April 2012 who are aged 46 or over will continue to accrue pension in their existing scheme on a tapered basis.

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<sup>3</sup> Pensions in payment and in deferment are indexed in line with the Pensions Increase Act 1971 and increases in line with this Act are assumed to be in line with the CPI.





## Review of the Firefighters' Pension Arrangements – Verification of scheme-specific proposals

### Appendix B: Data

B.1 This appendix contains summary statistics of the data used to value the Reference Scheme and the new scheme structure

B.2 Table B1 contains the number of members in the scheme, their pensionable salaries and their average ages weighted by pensionable salaries.

**Table B1 - Active members as at 31 March 2011**

|                | Number        | Total Pensionable Salaries<br>(£ million pa) | Average Age weighted by pensionable salaries |
|----------------|---------------|----------------------------------------------|----------------------------------------------|
| <b>Males</b>   | 33,953        | 1,064                                        | 41.0                                         |
| <b>Females</b> | 1,474         | 42                                           | 35.3                                         |
| <b>Total</b>   | <b>35,427</b> | <b>1,107</b>                                 | <b>40.8</b>                                  |



Review of the Firefighters' Pension Arrangements – Verification of scheme-specific proposals

## **Appendix C: Cost Ceiling Instructions**

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This report is based on the series of instructions which Treasury officials have provided as listed in the documents below.

- James Richardson's letter to Jeremy Pocklington of 22 July 2011. This outlined the cost ceiling test and stated that "cost ceilings cannot be exceeded in developing scheme specific proposals". Paragraphs 8-11 of Annex A of that letter described in more detail the arrangements for agreeing new scheme designs.
- GAD's note of 7 October 2011 *Cost ceilings for scheme level discussions: Advice on data, methodology and assumptions* which provided advice on appropriate data, methodology and assumptions for the purpose of cost ceiling calculations
- The Chief Secretary to the Treasury's letter to Brendan Barber on 7 October 2011. This confirms that the Government has agreed to spread the costs of transition and past service over a period of 7 years.
- James Richardson's letter to Jeremy Pocklington of 7 December 2011. This described how the cost ceiling test should be applied following the Chief Secretary to the Treasury's statement in the House of Commons on 2 November 2011. In particular, in respect of the 10-year protection announced on 2 November 2011.
- The Chief Secretary to the Treasury's letter to the Secretary of State for Communities and Local Government on 7 December 2011. This stated that the cost ceiling should be consistent with the GAD advice of 7 October 2011 with suitable adaptations to take account of the scheme specific circumstances.
- HMT instructions to DCLG and GAD's HM Treasury and DCLG teams of 8 February 2012. This email described the requirements on the methodology used for valuing the early retirement terms in the new scheme design.

HMT's instructions of 8 February 2012 are set out below.

### **Costs in respect of protected members.**

Since the protected members will remain in the existing scheme, no additional costs would arise in respect of these members from the proposal to provide early retirement factors by reference to the active pension age. In these particular circumstances, HMT is content that the methodology and assumptions should be set accordingly so that the accrual rate in the Heads of Agreement does not reflect any cost in respect of protected members from the proposal to provide these early retirement factors.

### **Comparisons of cost in the longer term**

The assumed retirement patterns for new entrants, as opposed to unprotected FPS members, mean that the relative service costs of this proposed design and the reference scheme vary in the longer term.



## Review of the Firefighters' Pension Arrangements – Verification of scheme-specific proposals

HMT intend that the accrual rate in the Heads of Agreement needs to take account of the comparison of costs in the longer term, as well as the comparison in the shorter term. This is consistent with the approach adopted for other schemes where the costs of proposed scheme designs were relatively higher in the longer term, further to paragraphs 8.21 to 8.23 of GAD's note of 7 October 2011.

### Treatment of past service costs

A past service cost arises under this proposed scheme design in respect of unprotected FPS members. HMT policy on the treatment of this past service cost is set out below. This is consistent with the approach adopted for other schemes, in particular the approach adopted for the TPS verification report of 19 December 2011.

Having determined a proposed scheme design that remains within the published cost ceiling when assessed across members of all ages (including those within 10 years of pension age) in the long term and the short term, schemes may offer protection for those within 10 years of their scheme's Normal Pension Age on 1 April 2012 and a taper of 3-4 years without any reduction to the accrual rate of proposed scheme design. Schemes may offer transitional arrangements over and above the 10 year protection and 3-4 year taper, but in this case the accrual rate must be reduced to allow for the extra costs of additional protection. The costs of the proposed scheme design with additional transitional protection and reduced accrual rate must not exceed the costs of the original proposed scheme design with the 10 year protection and 3-4 year taper.

Note this requires an iterative process to set the cost limits:

- Firstly the accrual rate required for the proposed design (without additional transition) will need to be calculated – this is then used to set the cost limit for transition / past service costs
- Then this accrual rate would need to be adjusted for transition / past service costs

The 7 year averaging period still applies, and so the transition cost limit is as follows:

|                                                                                                                                                        |   |                                        |   |                                                                                                                                                                                             |
|--------------------------------------------------------------------------------------------------------------------------------------------------------|---|----------------------------------------|---|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Average contribution rate required in 2015-2022 for proposed scheme design (including 10 year protection, taper, transition and adjusted accrual rate) | + | Past service costs spread over 7 years | ≤ | Average contribution rate required in 2015-2022 for original proposed scheme design (including 10 year protection and taper, but before allowance for transition and adjusted accrual rate) |
|--------------------------------------------------------------------------------------------------------------------------------------------------------|---|----------------------------------------|---|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

### Difference in member behaviour for new entrants post-2015

The nature of this proposed scheme may lead to differences in member behaviour: in particular, members may choose to retire between age 57 and age 60. In these cases, in accordance with paragraph 8.13 of GAD's note of 7 October 2011, HM Treasury sets assumptions for the purpose of verifying that proposed pension scheme design is within the



#### Review of the Firefighters' Pension Arrangements – Verification of scheme-specific proposals

cost ceiling that are consistent with those used in the calculation of cost ceilings, but HM Treasury considers making allowance for those behavioural differences. Under the reference scheme it is assumed that all age retirements of active members occur at age 60. HM Treasury intends that for the purposes of cost ceiling calculations it should be assumed that for new entrants post-2015 under this proposed scheme design 25% of active members in service at age 57 would retire and take an actuarial reduced benefits at that age.

## **Annex D**

### **Employer cost cap and floor, opt out review, and 25 year guarantee**

#### **Employer cost cap and floor**

1. An employer cost cap will be introduced to cover unforeseen events and trends that significantly increase scheme costs. The employer cost cap is intended to provide backstop protection to the taxpayer and will be based on cap and share principles. This means that changes to contribution rates due to 'member costs' will be controlled by the cap. Financial cost pressures, including changes to the discount rate, will be met by employers. The employer cost cap will be symmetrical so that, if reduction in member costs fall below a 'floor', members' benefits will be improved.
2. The cost cap will include the impact of changes in costs such as actual or assumed longevity, of careers or the age and gender mix of the workforce. These costs cover all schemes (old and new) and all types of service (past and future) of active, deferred and pensioner members. Changes in actual and assumed price inflation and the discount rate will be excluded from the cost cap.
3. Scheme valuations will take place periodically to assess how the cost of the scheme has increased or reduced. In the event that member costs drive the cost of the scheme above the cap or below the floor, there will be a period of consultation with relevant groups before changes are made to bring costs within the cap and floor. If agreement cannot be reached through consultation, the accrual rate will be adjusted as an automatic default.
4. The employer cost cap will be set at 2% above and the floor set at 2% below the employer contribution rates calculated following a full actuarial valuation ahead of the introduction of the new scheme in 2015. Caps will not be based on cost ceilings.

#### **Reviewing contribution levels and opt-out rates**

5. The Government remains committed to securing in full the Spending Review savings of £2.3bn in 2013-14 and £2.8bn in 2014-15 from increased member contributions, and will consult formally on implementation in due course. The Government will review the impact of the 2012-13 contribution increases, including on opt-out, before taking final decisions on how future increases will be delivered. Interested parties will have the opportunity to provide evidence and views to the Government.

## **25 year guarantee**

6. The Chief Secretary to the Treasury set out to Parliament on 2 November an offer on public service pensions that is fair and sustainable, and one that can endure for 25 years. This means that no changes to scheme design, benefits or contribution rates should be necessary for 25 years outside of the processes agreed for the cost cap. To give substance to this, the Government intends to include provisions on the face of the forthcoming Public Service Pensions Bill to ensure a high bar is set for future Governments to change the design of the schemes. The Chief Secretary to the Treasury will also give a commitment to Parliament of no more reform for 25 years.



## **NORTHERN IRELAND PUBLIC SERVICE PENSIONS REFORM**

**Consultation on Proposals to Reform Public Service**

**(DFP Publication 21 January 2013)**

**Response of the TRADE UNION SIDE (TUS)**

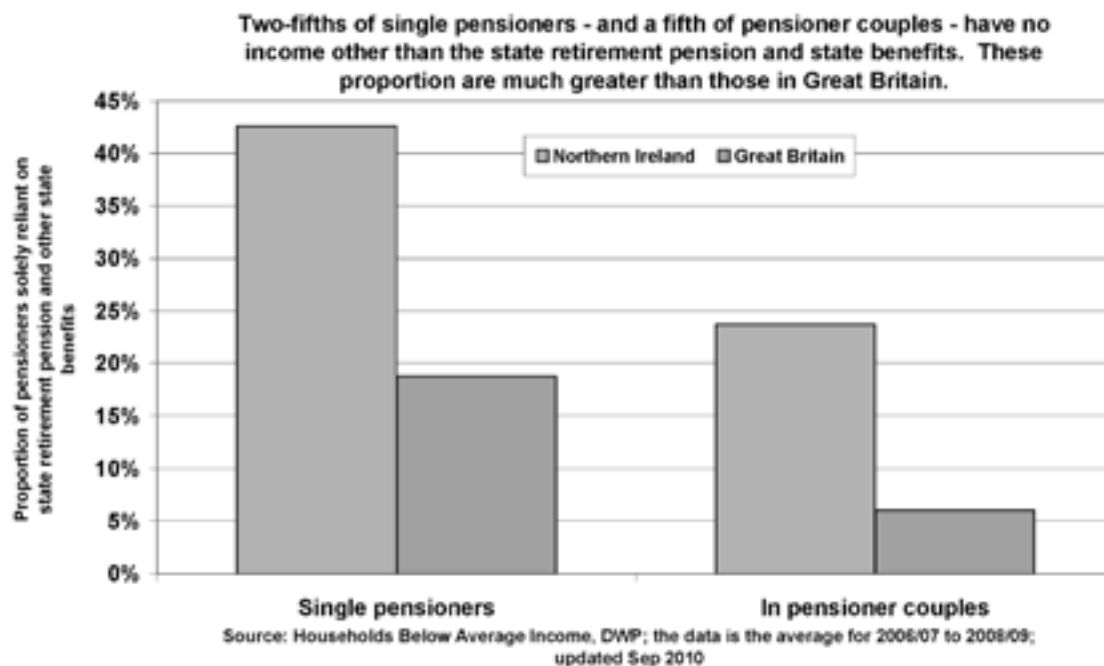
**Comprising the 34 Affiliated Unions of the Northern Ireland  
Committee – Irish Congress of Trade Unions (NIC-ICTU)  
and non-affiliated unions**

**April 2013**

## **INTRODUCTION**

1. TUS is the acronym used for the purposes of this submission, standing for 'Trade Union Side'. We have chosen this terminology as the trade unions involved in negotiations on Public Sector Pension Reform comprise more unions than are presently affiliated to the Northern Ireland Committee of the Irish Congress of Trade Unions.
2. Congress represents 34 trade unions in Northern Ireland. These unions are engaged in representing over 250,000 workers who are employed in the full range of economic and social activity in our society. Non-affiliated unions which are represented in these negotiations include the Royal College of Nursing and the British Medical Association.
3. This paper is a composite of the submissions on this issue being submitted on this Bill by individual trade unions. We ask that readers of this submission take the time to read each submission, due to their specific expertise in each of the public sector pensions schemes affected by this proposed legislation. This TUS submission aims to offer a flavour of the views being offered by the trade union on behalf of their members presently in these pensions schemes and, it should be noted, all of those joining the schemes in the coming years and even decades.
4. The numbers affected are substantial. We refer not to the questionable figure of £262 Million 'taken' from the bloc grant (the calculation of which we shall return, but the active, deferred and pensioner members of the six main schemes (for which we have figures).
5. The total membership of the Police Pension Scheme is 19,264 active, deferred and pensioner members.
6. The Local government Pension Scheme (NI) has 95,394 members.
7. The NI Teachers Pension Scheme has 60,393 members.
8. The NI Firefighters Pension Scheme has 2,422 members.
9. The Health & Social Care (NI) Pension Scheme has 101,083 members.
10. The PCSPS (NI) scheme has 68,291 members.
11. The figures above give weight to the argument that this is not legislation which can or should be rushed. One should note also the fact of pensioner poverty in Northern Ireland, summarised in this graphic:





12. The fact that most workers in the private sector do not have adequate (or any) pension provision is not the fault of public sector workers who have decent pensions. Reducing the value of public sector pensions may make some people feel better, but that will hardly improve the lot of anybody. There are, however, households with both public and private sector workers, whose retirement is dependent upon having at least one adequate pension. Trying to justify this move to cut the value of pensions through faked concern for private sector workers is a staple of radio phone-in shows, but it is shallow rhetoric.
13. Pensioners spend their money. As a rule, the 'saving' part of their share of income happens ahead of retirement. Retired people use the reduced income they have in the local economy. Reducing the value of pensions will mean reduced demand for the economy as a whole.
14. Taking a long run macro-economic view, there would also be consequences for the benefits system, as well as reduced taxation receipts from retired people.
15. As will be illustrated in the comments that follow TUS is wholly opposed to the proposed content of the NI Bill. In addition, the Bill needs to be considered in a much wider context with regard to both Public Service Pensions and proposed changes to the State Pension.
16. The change in indexation from RPI to CPI adversely impacts on the value of public service pensions by circa 15%. In addition for the unfunded schemes (all those within the ambit of the Bill except LGPS/NILGOSC) the additional employee contributions are to average out at 3.2% by April 2014. These represent yet further attacks on public sector pensions.

17. The Westminster DWP whitepaper and subsequent draft bill of January 2013, *The Single-Tier Pension: A Simple Foundation for Saving*, has major implications for public service pensions. In particular two aspects;
- (i) the arrangements for increasing the State Pension Age; and
  - (ii) the ending of contracting-out.
18. The comments that follow are based on the structure of the DFP consultation paper of 21/1/13.

### **CONSULTATION DOCUMENT**

19. **Purpose:** TUS does not accept that it is the role of the NI Executive and in particular the NI Assembly to just replicate in full the Westminster Bill. Public Service Pensions are a devolved matter and there is a need to give full and proper assessment to the issues raised in this response and by the NIC ICTU Trade Union Side both in its engagement with the Assembly DFP Committee and in the meetings with DFP/Sponsoring Departments Officials.
20. **Background: Why are Reforms Needed?:** in 2005 public service unions entered in to negotiations with employers on a scheme-by-scheme basis and agreed certain outcomes for the future of public service pension schemes. In many cases the change either had still to be introduced and/or agreement reached on measures such as “cap and collar”. The current Westminster Government reneged on the outcome of those negotiations as soon as it was elected in 2010. TUS, whilst unhappy with aspects of the 2005 changes believes that they provided the basis for fair and sustainable public service pension reform.
21. It is TUS’s view that the totality of the changes are not only an attack on public servants but will also seriously damage scheme sustainability. The implications include likely further additional contribution increases, further increases to normal retirement age and yet more diminution of scheme benefits. This will result in greater dependence upon welfare benefits by retired public servants and exacerbate pensioner poverty.
22. Reference is made to the work of the “Independent Public Service Pensions Commission (IPSPC), otherwise known as the Hutton Report. TUS disputes the ‘independence’ of the IPSPC and would also point out that the Westminster Government interceded on the work of the Commission via the unilateral decision to change indexation to CPI from RPI. The Government also determined at interim report stage to apply the average 3.2% additional contributions, again without any negotiation or consultation.
23. **Managing Pension Costs:** Reference is made to the potential losses to the NI block funding. There is no proper basis or assessment of how the Finance Minister arrived at the quoted £262m figure. What has been made clear by the Finance Minister to his fellow Ministers is that each Stormont Department will

have to fund the 'cost' of not implementing the Reforms from their Departmental budgets. This devolution of responsibility will place ministers under pressure, not alone in respect of this Primary Legislation, but in considering the Secondary Legislation and Regulations for each Scheme.

24. This section at least brings some honesty to the basis for the proposed changes. It identifies that by circa 2060 the GDP costs of public service pensions will fall from 1.5% to 0.9%. This is clearly linked to the proposals for the changes to the state pension with its aim being by 2060 to reduce GDP expenditure on state pensions from 8.5% to 8.1
25. Reference is made to DFP's own "actuarial analysis". If this is the document provided to the NIC ICTU Trade Union Side then TUS disputes the accuracy of the figures. The work done by GAD was predicated on the NI HSC Scheme extrapolated across the rest of the NI Public Service Schemes on a 7% figure. The HSC costing is disputed as it applied a baseline cost of 26% vis-à-vis the published cost figure of 21%. No account was taken of scheme variables across the other schemes such as membership uptake pension values, age profile, the impact of auto-enrolment to list just a few.
26. The unions have pressed for and to date been denied (with the exception of NILGOSC) full scheme triennial actuarial assessments. Costings that can be relied upon can only be so when those assessments are made available.
27. The costs to the NI Block and the cost for social security have not been properly assessed. In particular the wider macro economic impact of increasing the normal retirement age with the resultant reduction in labour market opportunities for the unemployed, school/university leavers and those seeking to return to the labour market has not been researched.
28. **The Bill in Westminster:** At the time of writing, the Westminster Bill has yet to be completed. In the stages to date there have been a number of changes and it remains to be seen as to what the final form of the Bill will be. Given the timeline it is not acceptable to TUS that negotiations on the NI Bill should be shoehorned or truncated in order to meet unrealistic timeframes imposed by the Government at Westminster.
29. **Core Provisions:** As per paragraph 20, the post-2005 outcome addressed these issues and it must therefore be concluded that the intent of the Government is to again attack public servants and make them pay for the wider economic mismanagement of the UK.
30. **CARE:** TUS does not accept that any case has been made to remove the final salary link, it is accepted that some TUS members are already covered by a CARE Scheme i.e. NUVOS PCSPS (NI) members. There are options/solutions that can deal with what are deemed to be excesses in terms of those who enjoy pensions for example that produce annual income into six figures. Such examples should be dealt with by a fairer general taxation regime.

31. **Linking NRA to SPA:** See comments elsewhere in this response as to the need to assess the macro economic impact in Northern Ireland. TUS believes without prejudice that at the very least there is value in establishing a Northern Ireland Review Group, similar to that established for the NHS Scheme to examine the increased NRA for various occupational groups across the Schemes. Another option that should be examined is the flexible decade of retirement, this would allow for people to leave early without actuarial deductions on the basis that going forward others will wish to stay beyond the NRA.
32. **Fair Deal:**  
TUS would wish to see specific mention in the Northern Ireland Bill to an agreement on “Fair Deal”. In future Fair Deal would be achieved by members being allowed to stay in their existing public service schemes on first and subsequent transfers to the private sector. TUS sees this as a key protection both to the scheme members and the continuing sustainability of the schemes. ‘Fair Deal’ is important to scheme members, because it means their pension provision will not worsen if they are outsourced. It is important for the continuing sustainability of the schemes because if large numbers of contributing members are lost to the scheme it means the schemes will become increasingly ‘cash poor’ with the gap between contributions coming in, and pensions being paid, widening. In addition, for funded schemes it will mean the proportion of younger members against the total membership is likely to decline, with the result that the older profile of the scheme members will mean the cost of the scheme increasing.
33. **Final Salary Link for Accrued Service:** This is not giving anything, these are acquired rights related to pension as deferred pay. It is also the case that to do otherwise would be contrary to the convention on Human Rights as it is deemed that pensions are property and to have any erosion of the acquired entitlement would constitute theft of personal possessions.
34. **Cap/Collar:** TUS does not accept the cost basis of the HMT/GAD model scheme, nor the two papers of November 12 on cap/collar and triennial review mechanics. The cost envelope was worked backwards to suit what Government determined would be the maximum amount it would contribute to the schemes. The impact of breaching the collar will only result in further damage to schemes by increased opt outs as the only two solutions are either reduced benefits and/or further additional employee contributions. An additional issue relates to the correlation between increased NRA and ill-health retirements, these costs should not be included as they relate directly to the Governments decision to both increase NRA and to further link it to increases in SPA.

The cost sharing aspect was one of the post 2005 reforms that discussions had only commenced on within the various schemes.

TUS also has concerns regarding the direction taken on possible closure to existing Injury and Compensation Schemes. We have already set out our

understanding that existing public service schemes should not be closing but would be changed from a scheme change date to reflect the respective scheme specific agreements. We believe the emphasis in this section should be on continuing existing injury allowance arrangements in accordance with the existing scheme regulations.

35. **Protections:** The protections if required as a consequence of the NI Executive/Assembly forcing changes should run for 10 years plus the taper from the implementation date of the revised schemes. De facto they are not 10 year protections given they ran from 1/4/12 yet it is planned that the implementation date is 1/4/15, thus really only 7 year protections (with LCPS/NILGOSC having a proposed 1/4/2014 date).
36. **Governance:** TUS supports the governance arrangements for NILGOSC in respect of scheme oversight/administration. There needs also to be proper negotiating bodies established to deal with scheme regulations, cap/collar, etc. The DOE LGPS/NILGOSC Review Group could form the basis for such scheme specific bodies. In fact, Lord Hutton in his final report recognised member representation on pension fund committees represented best practice and should be introduced.
37. **Twenty Five Year Guarantee:** There is no reference to this in the document yet it is a fundamental tenant of the Government's position, albeit wiped out as a consequence of the Single State Pension proposals.
38. **General NI Position:** It is TUS view that the NI Executive and Assembly should fully exercise its devolved authority on public service pensions. There is no justification to follow the Westminster Bill, especially when predicated upon dubious assumptions as to the NI Block impact.
39. As clearly pointed out pensions are both a negotiable matter and deferred pay therefore the NI Executive had no right to come to a unilateral decision on 8/8/12 without any negotiation or consultation with trade unions and scheme members.
40. The timeline is wholly unacceptable. At 5 April the position for the LGPS England/Wales is still not clear thus making it impractical for NILGOSC changes from 2014. The 2015 date for other schemes is also not viable, given the timeline for the Bill and the need for scheme-by-scheme negotiations on the regulations.
41. No reference has been made to the November 12 HMT Paper on Fair Deal. TUS does not wish to see the Westminster approach being taken, it is TUS's position that full Fair Deal provisions need to be on the face of the Bill.
42. **EQIA Screening:** TUS fully rejects the decision to screen out a full EQIA. It is TUS's view that this is a pre-determined decision to (i) help expedite passage of the Bill and (ii) to deliberately ignore clear equality issues that arise.

For example, a key concern of the Fire Brigades Union (FBU) with the proposed Bill on Public Service Pension Reform is the imposition of a Normal Pension Age (NPA) of 60 for all Firefighters. A recent independent report commissioned by the Westminster Government broadly supports the concerns of the FBU and makes it clear that the majority of current Firefighters will not be fit enough to work to 60. It warns that in such cases, “the only option is to leave or have their contract terminated on capability grounds without early payment of pension.”

The report shows that based on actual information from four fire and rescue services that two thirds (66%) of those aged 55-60 are below the recommended fitness standard of 42 mL.kg-1.min-1. Many fire and rescue services’ fitness policies, including the one used in Northern Ireland, utilise this recommended fitness level.

It also warns that “It is likely that a substantially larger proportion of women will find it hard to maintain fitness at the required level, leading to a disproportionate number becoming unfit for firefighting before age 60”. The FBU is very concerned that the proposed changes will make it difficult, if not impossible to recruit and retain adequate numbers of female Firefighters within the Fire Service. We therefore believe that a full EQIA should be carried out.

43. **Part 1:** TUS contends that the proposals do represent a new policy rather than a change to existing policy. The scale of the changes are so draconian and fundamental to render the new schemes as being incomparable with the current schemes.
44. **Implementation Factors:** As per comments on the consultation document TUS seriously questions the financial analysis of the costings.
45. **Stakeholders Affected:** This is flawed as clearly the proposals impact upon trade unions in the representation of their members rights and entitlements with regard to pensions.
46. **Available Evidence Section 75 Category:** This is a very flawed, incomplete and gross over simplification of the totality of the issues and the inter-relationships between Section 75 categories.
47. **Racial Groups:** There is no evidence of any research into the uptake/opt-out of scheme membership by different racial groups. Pensions are a complex issue and the various proposed changes add greatly to such complexity. It is possible that Racial Groups are more likely to have difficulties understanding and dealing with the complexities around pensions.
48. **Age:** It is clear that the proposals have age implications which need to be fully assessed. All schemes have full age profile data to state age profile is not available for NILGOSC is a clear distortion of the facts. If not then it is a demonstration that DFP did not go looking for the data.

49. **Marital Status:** As with age in respect of the data. In fact all schemes require nomination forms to be completed as well as dependants data to be held.
50. **Men/Women Generally:** Again all schemes have full data sets.
51. **Needs, Experiences and Priorities:** Given the total lack of research and data gathering/analysis it is not surprising such N/A conclusions are drawn. A proper assessment would produce differing results.
52. **Part 2 Screening Questions:** Given the comments on paragraphs 36-47 above TUS rejects the conclusions in respect of the following Section 75 groups in particular; Age, Men/Women and Dependents.
53. **Part 3 Screening Decision:** To rely on the basis that all that is happening is a transposition of the Westminster Bill to Northern Ireland is not acceptable and not a defence against a full EQIA.
54. The FBU have provided evidence with regard to adverse impact on women fire-fighters and the LGPS England/Wales EIA identified equality impact issues.
55. The decision of the NI Executive is not binding as the ultimate authority rests with the NI Assembly in respect of the passage of legislation.
56. The screening is flawed due to the massive evidence/data gaps in spite of the readily available existence of such data.
57. TUS will lodge a complaint to the Equality Commission should a full EQIA not be completed.

## **CONCLUSIONS**

58. TUS, without prejudice to its opposition to the totality of public sector pension scheme reforms and the interface with the proposed revision from April 2016 of the state pension provisions, believes that the decisions of the NI Executive, DFP Minister and DFP Officials are wholly flawed.
59. The comments in this response clearly identify such failings. TUS calls on the NI Executive to scrap the proposals in their entirety.
60. In addition TUS calls on the NI Executive to reopen negotiations to include an examination of the impact of the RPI to CPI indexation change, additional employee contributions and the interface with the state pension proposals.

## ICTU and TUS letter dated 11 November

Mr S McAteer  
Clerk DFP Committee  
NI Assembly  
Parliament Buildings  
Stormont  
BELFAST

11 November 2013

Dear Shane

### Public Service Pension Bill

I refer to your letter of 10 October and regret the delay in responding. I hope the comments below are helpful and can still be taken on board by the Committee.

#### **1. Clause 3 (Subsection (3))/Clause 23**

TUS remains concerned despite the consultation requirements that the Bill still provides scope for adverse retrospective changes. TUS is of the view that the Bill should be amended to ensure retrospective changes can only be made with TUS agreement. Should as DFP suggest that such changes would be technical and negligible then TUS would be liable to agree them, however any detrimental changes would be subject, quite rightly to veto.

#### **2. Clause 5 Subsection (5)**

In order to ensure consistency and not to have potential disputes in negotiations with sponsoring Departments on the content of secondary legislation TUS remains of the view that member representation via the recognised Trade Unions/Staff Representative Associations should be provided for in the primary legislation.

#### **3. Clause 7**

It is likely that on the Trade Union Side there would be replication of representation, as is the current case in respect of NILGOSC and the DOE LGPS Review Group. In that particular case two of the TU members of the NILGOSC Committee also sit on the DOE LGPS Review Group TUS. There was a useful discussion on this matter at the Public Service Pensions Forum on Thursday 7 November, at which DFP and all the sponsoring Departments present accepted that;

- (a) nominations are a matter for TUS;
- (b) that there should be no obstacle to the double mandate; and
- (c) no conflict of interest arose.

#### **4. Clause 8/9/24**

TUS remains of the view that the affirmative resolution process provides better scope for the trade unions to engage with the Assembly on issues of concern. Given the lack of application by DFP of the Wolfe/Gunning principles we have serious concerns as to what may transpire once the Bill receives its Royal Assent, unless it contains the necessary safeguards.

#### **5. Clause 10**

NIC ICTU remains of the view that Prison Officers should be able to retire at age 60. In addition, we would still press the Committee to consider establishing a Northern Ireland



cross Departmental Working Group to consider the impact on increasing the occupational retirement age, along the lines of that established in the NHS (England/Wales). The POA will respond directly on the point re the 2007 negotiations of age 65 for new entrants.

Yours sincerely

**JOHN O'FARRELL**

## Prison Officers' Association



National Chairman: PJ McPartlin  
General Secretary: Steve Gillan  
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11/11/2013

Shane McAteer

Committee for Finance and Personnel

Room 419

Parliament Buildings

Belfast BT4

### Response to the Committee for Finance and Personnel

I write in response to your letter dated 23<sup>rd</sup> September 2013, specifically on the following clause.

#### Clause 10 (2)

In your response you said that Prison Officers in Northern Ireland are members of the existing pension scheme for Northern Ireland Civil Service and since 2007 new Prison Officers already have a pension age of 65.

POA never agreed to the change to the pension age of 65. The pension age was changed as part of a pension review which we were included in.

In the second paragraph you stated – In the course of consultations in Great Britain on the new Civil Service scheme design which will be made under the Westminster Public Service Pensions Act 2013 the Government made an additional offer to Prison Officer Unions. The offer would have allowed operational prison staff to retain their current pension ages for future service without significantly higher taxpayer costs, nor a detrimental effect on other civil service staff. The offer was an additional measure on top of the transitional protections provided in the Westminster Act which already mean those officers within 10 years of their current pension age will have their accrued and future pension rights protected until they leave service. POA rejected this package.

The offer made to POA in GB was a partial subsidy for operational prison staff in post on 1<sup>st</sup> April 2015 to retire at 65 without receiving an actuarial reduced pension.

1. The document sets out an offer of a partial subsidy for buying a reduced pension age (by means of increased pension contributions) without receiving an actuarially reduced pension. It will enable staff to buy a normal pension age (NPA) of up to 3 years lower (either 1, 2 or 3 years) than their state pension age (SPA) which on current assumptions would mean retaining a NPA of 65. It will not be possible to buy a NPA lower than 65.
2. NOMS would have provided a subsidy of up to 50% with the Officer making additional contributions to retain an NPA of 65.

The POA rejected this offer because they saw the retirement age and the pension agreements that they currently have as part of their terms and conditions of employment.

They saw this “buy back system” as expensive as the contributions would have had to increase by 13.4% to 18.9%. This was too expensive especially for those on lower pay bands.

In the NI Prison Service the recruitment has seen new grades and the re-grading of Auxiliaries to Prison Officers (in 2002) have their pension age set at 65. The existing Prison Officers that are affected by the change are as follows (figures correct as at 13/6/13 through an FOI request)

Prison Officers left are VER, who joined before Way Forward 222 of which 10 were under the age of 45 at April 2012 so fall outside of the transitional

protections. This group of 10 staff face the biggest loss, with the potential to lose their “doubling” up on pension accrual.

Prison Officers employed from the introduction of Way Forward 1989 until the last Prison Officers in 1995. 234 with 121 being under 45 April 2012. Again the ones under 45 have no transitional protections. Some of these staff could have nearly 24 years service completed by April 2015 and find that their NPA has moved from 60 to 65 and then are moved to the CARE instead of final salary and gratuity.

In total 456 Prison Officers will be affected by the changes to the 60 retirement age. The minimum service of these will be 20 years at April 2015; the Officers who fall outside of the transitional protections need to be included in them. As this is a small number of Officers affected by the changes to the pension surely there is merit in looking at retaining the 60 retirement age for the last of those on that contract.

Yours sincerely

PAUL HARDY

VICE CHAIRMAN (NI)

# Letter from HSSPS

FROM THE MINISTER FOR HEALTH,  
SOCIAL SERVICES AND PUBLIC SAFETY  
Edwin Poots MLA



Department of  
**Health, Social Services  
and Public Safety**

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Mr Daithi McKay MLA  
Chairperson  
Committee for Finance and Personnel  
Room 419  
Parliament Buildings  
Stormont  
BELFAST  
BT4 3XX

Our Ref: COR/1316/2013

Date: 19 November 2013

Dear Mr McKay

Thank you for your letter of 8 November requesting clarification on:

- proposals for the Firefighters Pensions Scheme 2015;
- potential numbers and implications if 85% of firefighters age 55 – 60 cannot maintain fitness standards; and
- the potential for transferring such firefighters into the wider public sector.

## Proposals for the Firefighters Pension Scheme 2015:

- A pension scheme design based on career average revalued earnings.
- An accrual rate of 1/58.7th (equivalent to around 1.70%) of pensionable earnings each year.
- There will be no cap on how much pension can be accrued.
- Active members' career average benefits to be revalued in line with average weekly earnings.
- Pensions in payment and deferred benefits to increase in line with Prices Index (currently Consumer Prices Index).
- Average member contributions of 13.2% from April 2015, with protection for new entrants. The Government will review the impact of the proposed 2012-13 contribution changes, including the effect of membership opt-outs, before taking final decisions on how future increases will be delivered in 2013-14 and 2014-15, and in the new scheme.
- Flexible retirement from the scheme's minimum pension age of 55, built around the scheme's Normal Pension Age of 60.
- Enhanced retirement arrangements for active members who are aged 57 or more.
- The Normal Pension Age will be subject to a regular review, which will consider if the Normal Pension Age of 60 remains relevant and will take full account of the economical, efficient and effective management of the fire service including the challenging occupational demands of operational firefighting and the changing profile of the workforce.

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- Members who retire later than the scheme's Normal Pension Age will have their pension enhanced to recognise that the pension is taken later.
- A deferred pension age equal to the individuals' State Pension Age.
- Optional lump sum commutation at a rate of 12:1 in accordance with HMRC limits and regulations.
- Ill-health retirement benefits and all other ancillary benefits to be based on the arrangements in the New Firefighters' Pension Scheme 2006 ('the 2006 scheme').
- An employer cap to provide backstop protection to the taxpayer against unforeseen costs and risks, as well as the chance for members to improve benefits if the costs of the scheme fall below a fixed point. This means that the taxpayer will not be faced with unlimited costs and that members will benefit if the scheme proves to be less expensive than expected; and
- A guarantee that, outside of the scheme designs parameters set out in the Proposed Final Agreement, there will be no further reform for the next 25 years.

The Department for Community and Local Government (DCLG) Minister, Brandon Lewis, made a final offer, on 19 June to the Fire Brigade Union (FBU), proposing to extend the enhanced actuarial reduction arrangements so that firefighters between 55 and 57 years of age would be able to access their pension early on improved terms (with the reduction calculated from the Normal Pension Age of 60), compared to that set out in the Proposed Final Agreement. This would also see a revised accrual rate of 1/59.7<sup>th</sup>. The final offer was subject to FBU members agreeing to the terms of the offer. This was declined when strike action was announced.

DHSSPS officials will continue to maintain regular communication with DCLG whilst they progress their primary legislation. DHSSPS have responsibility for the successful progression of appropriate secondary legislation to give effect to the 2015 scheme in Northern Ireland from April 2015. The continuation of parity with the rest of the United Kingdom in terms of firefighter pension is the basic aim.

The firefighters pension scheme remains one of the most generous in the public sector.

#### **Potential numbers and implications if 85% of firefighters age 55 – 60 cannot maintain fitness standards.**

The actual position in Northern Ireland is unclear and the available information is incomplete. The Department will work with Northern Ireland Fire and Rescue Service (NIFRS) to ensure that comprehensive information is captured going forward to facilitate a fully informed discussion.

NIFRS did not conduct fitness testing prior to 2011. During 2013 to date one firefighter in the age range 55–60 has failed a fitness test. The individual firefighter who failed the fitness test was provided with a personal fitness regime and has since passed the fitness test. There are currently 34 firefighters in total within the 55-60 age range.

#### **The potential of transferring such firefighters into the wider public sector.**

If a firefighter leaves the fire service and is capable of continuing work then he/she will have the same opportunity as every other member of the general public, to apply for jobs that become available within the wider public sector, or the private sector. Under

employment legislation retired firefighters cannot be provided with a more advantageous position which allows them to compete for employment in the wider public sector regardless of the individual circumstances.

I hope that this provides sufficient detail in order to answer your queries.

**Edwin Poots MLA**  
**Minister for Health Social Services and Public Safety**

cc: Health Committee







Northern Ireland  
Assembly

Appendix 4

# DFP Papers and Correspondence



# Letter to Committee on proposal for an Assembly PSPB

## **Assembly Section**

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Committee for Finance and Personnel  
Room 419  
Parliament Buildings  
Stormont

Our Ref : MISC86/11-15

13 December 2012

## **Update to the DFP Committee – Revised Pension Scheme Arrangements from April 2015 – Assembly Public Service Pensions Bill**

Dear Shane,

This paper informs the Committee of the Minister of Finance and Personnel's intention to commence preparatory work on a proposed Public Service Pensions Bill to be introduced in the Northern Ireland Assembly.

The purpose of the Bill will be to give legislative effect to the decision taken by the Northern Ireland Executive on 8 March 2012

I. to commit to the policy for a new career average revalued earnings (CARE) scheme model with pension age linked to State Pension Age to be adopted for general use in the public service schemes; and

II. to adopt this approach consistently for each of the different public sector pension schemes in line with their equivalent scheme in Great Britain and not to adopt different approaches for Northern Ireland.

## **Background**

A Public Service Pensions Bill was introduced in the House of Commons on 13 September 2012. The Westminster Bill implements the recommendations made by the Independent Public Service Pensions Commission for the reform of public service pension schemes in the United Kingdom. These recommendations were accepted by the Coalition Government as the basis for its programme of public service pension reform at Budget 2011. The commitment made by the Executive on 8 March 2012 requires a legislative approach to be adopted to implement the main pension reform measures recommended by the Commission in the Northern Ireland public service pension schemes.

I wrote to you on 24 September to provide an update to the Committee on the background, purpose, and core provisions of the Westminster Bill and also of the intention of the Minister of Finance and Personnel to propose a legislative consent motion in the Assembly to extend the Bill in Northern Ireland.

### Legislative Consent Motion

The proposal for a legislative consent motion was discussed by the Executive on 22 November 2012 and the Executive has not given its agreement to adopt this legislative approach.

The Minister has written to the Chief Secretary to the Treasury to inform him of the position and has requested that the provisions contained in the Westminster Bill which would legislate for Northern Ireland be removed at the earliest opportunity.

### Public Service Pensions Assembly Bill

It is the Minister's intention to introduce a Bill in the Assembly to implement the core provisions of the pension reform programme recommended by the Independent Public Service Pension Commission and which the Executive committed to on 8 March 2012.

The proposed Bill will implement the reform of public service pension schemes made for the following classes of public service employees in Northern Ireland:

- civil servants;
- local government workers;
- health service workers;
- teachers;
- fire and rescue workers;
- members of the police force.

The main Northern Ireland public service schemes and their responsible Departments are:

|                                                           |                                                         |
|-----------------------------------------------------------|---------------------------------------------------------|
| Northern Ireland Teachers' Pension Scheme                 | Department of Education                                 |
| Local Government Pension Scheme (Northern Ireland)        | Department of Environment                               |
| Principal Civil Service Pension Scheme (Northern Ireland) | Department of Finance and Personnel                     |
| Health and Social Care Pension Scheme (Northern Ireland)  | Department of Health, Social Services and Public Safety |
| Firefighters' Pension Scheme (Northern Ireland)           | Department of Health, Social Services and Public Safety |
| Police Service of Northern Ireland Pension Scheme         | Department of Justice                                   |

The policy intention is that the provisions of the proposed Bill will apply to all public sector schemes in Northern Ireland including bespoke schemes which make pension provision for employees of public bodies not captured by the above categories.

### Timescales for an Assembly Bill

In line with the decision taken by the Executive to implement these reform measures consistently for each of the different public sector pension schemes in parity with the equivalent schemes in Great Britain the proposed Bill cannot be introduced until the final content of the Westminster Bill is known. The Westminster Bill is expected to receive Royal Assent in May 2013.

The Department intends to engage fully with the Committee on the policy, consultation and scrutiny stages associated with the passage of the proposed Bill in the Assembly and arrangements are in place for officials to attend the Committee on 9 January 2013 to provide a policy briefing. A briefing paper will be made available to Committee members in advance of this date.

I would be grateful if you could forward this update on this issue to the Committee. Officials will keep the Committee updated on this matter.

Yours sincerely,

Norman Irwin

## Committee Session 9 January 2013 - Briefing paper

### **Public Service Pensions Bill 2013**

**From:** Christine Pauley

**Date:** 4 January 2013

#### Summary

**Business Area:** Corporate HR

**Issue:** Proposed Public Service Pensions Bill 2013

**Restrictions:** None

**Action Required:** To note

#### Background

1. The Committee has requested that Corporate HR officials attend the meeting on 9 January 2013 to provide information on a proposed Public Service Pensions Bill. The Committee has not been briefed by officials before on this issue. However a written update was provided on 25 September 2012 (Ref: MISC76/11-15) to inform the Committee of the background to the Coalition Government's programme for public service pension reform and the core provisions of the Public Service Pensions Bill introduced at Westminster on 13 September 2012. That paper also provided an assessment of the legislative options for implementation of public service pension reform in Northern Ireland and the proposal by the Minister of Finance and Personnel to seek Executive approval for a legislative consent motion in the Assembly to extend the Bill to the devolved Northern Ireland schemes.
2. On 13 December 2012 the Department informed the Committee that the Executive had declined to agree to the proposed legislative consent motion at its meeting on 22 November 2012 and that the Minister now intends to introduce an Assembly Bill to give effect to pension reform in Northern Ireland.

#### **Public Service Pension Reform - Policy**

3. The proposed Bill will give legislative effect to the Executive's decision of 8 March 2012 to introduce major changes to public service pension schemes. In particular the Executive agreed to:
  - I. Commit to the policy for a new career average revalued earnings (CARE) scheme model with pension age linked to State Pension Age to be adopted for general use in the public service schemes; and
  - II. to adopt this approach consistently for each of the different public sector pension schemes in line with their equivalent scheme in Great Britain and not to adopt different approaches for Northern Ireland.
4. The agreed policy is formulated on recommendations made by the Independent Public Service Pensions Commission for reform of public service pension schemes as part of its fundamental structural review of public service pension provision. The Commission reported that the public service pension structure in the United Kingdom has not responded flexibly to rising pensions costs and increases in longevity in the past few decades and it is not tenable in the long-term.

#### **Career Average Revalued Earnings (CARE) Schemes**

5. The Commission's final report stated that final salary schemes did not provide the "right design for future public service schemes" and that final salary schemes:

“unfairly benefit high flyers who can receive up to twice as much in pension payments per £100 of contributions. It exposes taxpayers to salary risk (the risk that higher than expected salary rises increase the cost of providing pensions), which should be borne by the scheme member who benefits from the salary rise. And final salary creates a barrier to employees moving from the public to private sector. These inherent problems of final salary schemes impact on fairness and sustainability and have led the Commission to conclude that an alternative model should be chosen for the future”.<sup>1</sup>

6. The Commission’s report concluded that CARE schemes can provide more equitable outcomes for lower and moderate earners, are fairer for the taxpayer and less costly for future employers to provide.
7. The report recommended that pension rights already accrued in the unreformed schemes up until the date of commencement of the new arrangements should be protected.

#### **Scheme Pension Age linked to State Pension Age**

8. The Commission’s final report also recommended, that for future accruals in the new CARE pension schemes, the normal scheme pension age for most public service employments (but not those for the uniformed services) should be linked to the State Pension age and that the link between the State Pension Age and Normal Pension Age should be regularly reviewed, to make sure it is still appropriate. The reference to the uniformed service related specifically to the Armed Forces, the Police and Firefighters. It was not just those in a uniform (such as Prison Officers, Immigration Officers etc, who are not excepted from the link to state pension age), nor those with a potentially physically demanding role (such as paramedics). The Commission concluded that:

*“The introduction of the link to the State Pension Age, which will initially move Normal Pension Ages to 65, will move the proportion of adult life in retirement for public service pension scheme members back to about a third: roughly where it was in the 1980s. The current State Pension Age of 65 is already the Normal Pension Age for most new entrants to public service pension schemes. Moving to this for future accrual will more fairly distribute the benefits between scheme members. In the long term, the timetabled increases in State Pension Age should help to keep the proportion of adult life in retirement for members around this level, on current life expectancy projections”.<sup>2</sup>*

#### **Westminster Public Service Pensions Bill**

9. A Public Service Pensions Bill was introduced in the House of Commons on 13 September 2012. The Westminster Bill’s progress has been swift to date, having already completed committee stage and 3rd reading in the House of Commons, the Bill entered the House of Lords on 5 December 2012 and received its 2nd reading in that House on 19 December 2012. The Bill is expected to achieve Royal Assent in May 2013.
10. The Westminster Bill will provide the core legislative framework to enable each of the public service pension schemes which fall within its remit to introduce secondary legislation to amend their schemes in line with the Coalition Government’s objectives for reform based on the recommendations of the Independent Public Service Pensions Commission.
11. The reforms in the Bill will apply for pension schemes made for the following classes of public service employees:
  - civil servants;
  - the judiciary;

1 The recommendations of the Independent Public Service Pensions Commission are contained in its final report which was published on 10 March 2011. [www.hm-treasury.gov.uk/indreview\\_johnhutton\\_pensions.htm](http://www.hm-treasury.gov.uk/indreview_johnhutton_pensions.htm)

2 Independent Public Service Pensions Commission Final Report - 10 March 2011

- local government workers health service workers;
- teachers;
- fire and rescue workers members of police forces; and
- members of the armed forces.

12. The Westminster Bill contains provisions which require the majority of the public service schemes within its scope to implement these reforms by 1 April 2015 (The relevant date for Local Government Pension Schemes is 1 April 2014). HM Treasury has confirmed that the policy intent is for the provisions of the Westminster Bill to apply to all public sector schemes, including bespoke schemes which make pension provision for employees of public bodies not captured by the main schemes, although in some cases this may be to a longer timescale.

### Scope of the Proposed Assembly Bill

13. The main devolved public service schemes and their responsible Departments which will fall within the remit of the proposed Bill are detailed in the table below:

| Pension Scheme                                                                       | Minister            | Department                                              |
|--------------------------------------------------------------------------------------|---------------------|---------------------------------------------------------|
| Northern Ireland Teachers' Pension Scheme                                            | John O'Dowd MLA     | Department of Education                                 |
| Local Government Pension Scheme (Northern Ireland)                                   | Alex Attwood MLA    | Department of the Environment                           |
| Principal Civil Service Pension Scheme (Northern Ireland)                            | Sammy Wilson MP MLA | Department of Finance and Personnel                     |
| Health and Social Care Pension Scheme Firefighters Pension Scheme (Northern Ireland) | Edwin Poots MLA     | Department of Health, Social Services and Public Safety |
| Police Service of Northern Ireland Pension Scheme                                    | David Ford MLA      | Department of Justice                                   |

14. In Northern Ireland, superannuation arrangements for armed forces and senior judicial appointments remain reserved. The policy intent of the proposed Northern Ireland Public Service Pensions Bill is for the provisions of the Bill to apply across all devolved public sector employments in Northern Ireland. In addition to the schemes listed above, the provisions of the proposed Bill will apply for devolved judicial appointments administered by the Department of Justice. In other public bodies where bespoke pension schemes exist to make pension provision which is not captured by the main Northern Ireland public service pension schemes, for example, the North/South Pension Scheme, these will also be within the remit of the Assembly Bill.

### Core provisions of the proposed Bill

15. The core provisions of the proposed Bill, based on the recommendations of the Independent Public Service Pensions Commission, will implement the policy agreed by the Executive on 8 March and are in line with reforms being carried in the Westminster Bill.
16. The core provisions are:
- a move to a Career Average Revaluated Earnings (CARE) scheme model of pension saving;
  - a direct link to equalise schemes' Normal Pension Ages with the State Pension Age (except for the police and fire and rescue services);
  - a Normal Pension Age of 60 (subject to regular review) for the police and fire and rescue services;



- transitional protection measures for scheme members who are within 10 years of their existing Normal Pension Age on 1 April 2012; these groups would remain in the existing schemes (except for the local government scheme, where transitional protection is to be provided by means of an underpin). Those within a further 3-4 years of normal pension age would have an option for a delayed transition to the new scheme;
- a final salary link for any final salary pension accrued prior to the date at which the new schemes will commence;
- a scheme cost cap with a default mechanism to maintain employer scheme costs within set cost floor and ceiling limits;
- extension of scheme access arrangements to allow public service workers whose employment is compulsorily transferred to a new employer to retain membership of a public service scheme; and
- revised measures for the management, regulation and administration of schemes.

### **Timescales for Bill**

17. The projected timescale for Royal Assent being secured for the Bill has been provisionally set for **April 2014**. This timescale presupposes a date for the Bill's introduction in the Assembly in **June 2013**.
18. Following enactment, secondary legislation will be required to amend the rules of each devolved public service pension scheme to give effect to the reform measures carried in the Bill. This work will be taken forward by each of the Ministerial Departments which have individual responsibility for pension schemes (as outlined in the table above). It is estimated that this process may take up to 10 months to complete. Current estimates are that the requisite secondary legislation and revisions to schemes' administrative processes will be in place by **February 2015**.
19. These projected timescales remain within the range of the deadlines contained in the equivalent Westminster Bill which require delivery of reform in the main public service schemes by 1 April 2015. The Chief Secretary to the Treasury has confirmed to the Minister of Finance and Personnel the Treasury expectation that public service schemes in devolved administrations should comply with these deadlines. (The relevant date for Local Government Pension Schemes is 1 April 2014 and the Minister with responsibility for the Local government Pension Scheme in Northern Ireland has already indicated his intention to introduce a revised scheme in line with that date).
20. A copy of the estimated timetable for completion of both primary and secondary legislative processes is attached at the Annex to this paper for the Committee's information. The timetable remains extremely tight and ambitious. It does not allow for any slippage and assumes that decisions are taken at the earliest opportunity to allow the legislative process to progress. The timetable provides for consultation on the policy content of the Bill being launched in January 2013 – which is in advance of the expected date for proposals in the Westminster Bill being finalised.
21. Members will wish to note that in a statement to the Assembly on 26 November 2012 the Minister of Finance and Personnel indicated an estimated date for Royal Assent for the Assembly Bill occurring in January 2015. The Minister also gave an undertaking to take steps to advance the legislative process wherever possible. The revised timetable is a consequence of progress made in this area, including the prioritisation of the Bill in the Office of Legislation Counsel's programme for DFP legislation. Executive Ministers have been informed of revised timescales.

### Financial Implications

22. The Minister of Finance and Personnel provided details to the Assembly on 26 November 2012 on potential costs associated with failing to meet the HM Treasury deadline stipulated in the Westminster Bill for introduction of pension reform by April 2015.
23. The estimated total savings which could be forgone from the main Northern Ireland public service schemes on an annual basis from a failure to implement the reforms has been estimated as in excess of £260m. Estimates specific to the individual schemes are<sup>3</sup>:

| Scheme                                   | Cost  |
|------------------------------------------|-------|
| Health and Social Care                   | £100m |
| Northern Ireland Teachers                | £62m  |
| Principal Civil Service Northern Ireland | £60m  |
| Northern Ireland Fire and Rescue Service | £23m  |
| Police Service of Northern Ireland       | £18m  |

24. On 3 December 2012 the Chief Secretary to the Treasury confirmed in writing to the Minister that a failure or delay in passing the necessary legislation to implement the pensions reforms in line with the deadlines contained in the Westminster Bill will result in a proportionate reduction in the Northern Ireland block grant.
25. In line with the revised legislative timetable the current expectation is that, with Assembly support for the speedy passage of the Bill and its conclusion by April 2014, each of the devolved Northern Ireland public service schemes will be in a position to implement reform to the timescales set out in the Westminster Bill. The Minister has advised that accountable Ministers who subsequently fail to deliver the required amendments to their schemes will have to shoulder any additional financial pressures.

### Consultation

26. Following the establishment of the Independent Public Service Pension Commission the Department of Finance and Personnel hosted a visit to Northern Ireland by the Commission in September 2010 and facilitated bilateral meetings between representatives from Northern Ireland public service pension schemes, employers and trade unions and the Commission on issues central to the reform of public service pensions which will be carried in the proposed Bill.
27. The Department of Finance and Personnel has provided initial briefings on the provisions of the proposed Bill at meetings of the Pensions Forum and with members of the Northern Ireland Public Sector Pensions Group (NIPSPG) who have in turn shared these updates with their relevant trade unions. Nationally, the Coalition Government has consulted centrally with the major trade unions including the National Trade Union Committee (NTUC) comprised of the seven nationally recognised trade unions in the civil service (PCS, POA, Prospect, FDA, NIPSA, Unite and GMB) on plans for pensions reform.
28. The proposed Bill has cross-cutting effect and the Department of Finance and Personnel is taking the lead role in the establishment of a central forum for the purpose of facilitating collective consultation between representatives of each scheme impacted by the Bill and a collective trade union grouping (such as NIC-ICTU), for the purpose of policy consultation on the Bill.

3 Estimates are based on a calculation method provided by the Government Actuary's Department and based on a formula which presupposes a potential saving attributable to pension reform of 7% of annual pensionable payroll.

29. It is proposed that public consultation on the policy content of the proposed Bill will commence in January 2013.

**Human Rights and Equality**

30. The Department will conduct an equality screening exercise to determine any potential impact on Section 75 groups and any subsequent equality impact assessments required.

**Summary and Next Steps**

31. Civil Service Pensions within the Corporate HR Directorate will co-ordinate work on the Bill and will be the single point of contact for Ministerial Departments which have responsibility for schemes on all issues connected with the drafting of the Bill.
32. Officials will continue to keep the Committee updated on developments on this matter including the timetable for the proposed Bill. Officials are available to provide further information and clarification to the Committee as required.

# Annex

## Timetable for Public Service Pensions Bill in the Assembly

### Executive Stages

| Submission to Minister with Draft Executive paper on policy and legislative route.                                                                                                                                                                                                                                   | Executive meeting for clearance of policy and the legislative route                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              | Delivery of Final Instructions to OLC and Drafting Period                                                                                                                                                                                                                                                                                                                                                                                                                                                       | Bill to Executive and Approval to Introduce        | Bill to Speaker for Clearance and Introduction | Pre-Introduction Briefing for Departmental Committee                                                                                                                            |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------|------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>Submission sent on 26 August 11</p> <p>Executive Paper issued on 16 September 2011</p> <p>Sixth Draft issued on 5 March 2012</p> <p>Executive Paper issued on 02 April 2012.</p> <p>Fifth Draft issued on 20 November 2012</p> <p>Final paper issued 22 November 2012</p> <p>Submission sent 23 November 2012</p> | <p>Executive agreement on 8 March 2012 to Policy Recommendation in E (12) 42 to maintain parity with changes to equivalent Schemes in Great Britain.</p> <p>i. to commit to the policy for a new career average revalued earnings (CARE) scheme model with pension age linked to State Pension Age to be adopted for general use in the public service schemes; and</p> <p>ii. to adopt this approach consistently for each of the different public sector pension schemes in line with their equivalent scheme in Great Britain and not to adopt different approaches for Northern Ireland.</p> | <p>GB Bill announced in Queens Speech 9 May 2012.</p> <p>Public Service Pensions Bill introduced at Westminster on 13 September 2012</p> <p>Royal Assent for GB Bill expected May 2013</p> <p>OLC intend to provide 1st Draft NI PSP Bill end Jan 2013 based on latest version of draft Westminster Bill.</p> <p>Final Instructions to OLC for NI Bill expected March 2013, dependant on passage of Westminster Bill and informed by outcome of consultation.</p> <p>Final Draft NI Bill expected May 2013.</p> | <p>13 June 2013 meeting or by Urgent Procedure</p> | <p>13 June 2013</p>                            | <p>First submission sent 22 September 2012.</p> <p>Further written submission required and evidence session now scheduled for 9 Jan 2013</p> <p>Formal session 24 June 2013</p> |
|                                                                                                                                                                                                                                                                                                                      | <p>Executive decision on 22 November 2012 Number E(12) / 176 not to use a LCM. A Northern Ireland Public Service Pensions Bill to be introduced to the Assembly.</p>                                                                                                                                                                                                                                                                                                                                                                                                                             |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |                                                    |                                                |                                                                                                                                                                                 |

**Assembly Stages**

| <b>1st Stage</b>                       | <b>2nd Stage</b> | <b>Committee Stage</b> | <b>Consideration</b> | <b>Further Consideration</b> | <b>Final</b> | <b>Royal Assent</b> |
|----------------------------------------|------------------|------------------------|----------------------|------------------------------|--------------|---------------------|
| 24 June 2013<br>(before Summer Recess) | 2 July 2013      | 3 July – end Nov 2013  | 14 Jan 2014          | Jan 2014                     | Feb 2014     | April 2014          |

**Secondary Legislation following Public Service Pensions Bill in the Assembly**

Public Sector schemes in Northern Ireland will have individual responsibility to introduce amendments to scheme rules in line with provisions introduced for the equivalent schemes in Great Britain.

Timetable for secondary legislation for Public Service Pension Schemes in NI (including PCSPS (NI))

|                                                                                                                           |                                              |
|---------------------------------------------------------------------------------------------------------------------------|----------------------------------------------|
| Expected Royal Assent for NI Public Service Pensions Bill                                                                 | <b>April 2014</b>                            |
| Drafting secondary legislation                                                                                            | <b>Feb 2014 ( after Final Stage of Bill)</b> |
| Consultation with TUS and on EQIA (if necessary) on draft amendments/regulations. Also briefing to Departmental Committee | <b>March - May 2014</b>                      |
| Analysis of Consultation Ministers agreement to go to Committee                                                           | <b>May/June 2014 Sept 2014</b>               |
| Consultation and briefing with Departmental Committee on the report of the outcome of consultation                        | <b>Oct – Dec 2014</b>                        |
| Laying amendments/regulations<br>(21 day rule where applicable)                                                           | <b>February 2015</b>                         |

Public Service Pensions Bill - Letter of response to DFP Committee request of 10 January 2013

**Assembly Section**

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Committee for Finance and Personnel  
Room 419  
Parliament Buildings  
Stormont

Our Ref – CFP191/11-15

25 January 2012

Dear Shane,

**Public Sector Pensions Bill**

At the Committee meeting of 9 January 2013 officials agreed to send some additional information to Members in relation to the Public Sector Pensions Bill. This information is included below.

**1. Information on the areas/issues in which there would be scope to vary from the Whitehall approach.**

**Scope for variance in the Bill – Primary Legislation**

Civil Service Pensions, in conjunction with Departments and the Office of Legislative Counsel, is working on the Public Service Pensions Bill to be introduced in the Assembly. This Bill will provide the primary legislation required to enable the implementation of public service pension reforms, as agreed by the Executive on 8 March 2012. This Bill is a framework piece of legislation, which will determine the high level provisions to apply across the public sector in Northern Ireland. The Committee was provided with a written update on 4 January 2013, on plans for the introduction of the Bill, including the detail of the proposed core provisions, the decision by the Executive to adopt these pension reforms and the proposed timetable and policy consultation. In the light of the decision by the Executive, it is anticipated that the core provisions will be adopted in the Bill.

In line with normal Bill procedure, the Public Service Pensions Bill will be debated in the Assembly and will be subject to full Committee scrutiny. Public Service pension policy is devolved. However the approach has been to apply changes to public service pension schemes here in line with policy developed centrally for the equivalent schemes in Great Britain. HM Treasury funding projections are formulated on the presumption that the policy intention contained in the Westminster Public Service Pensions Bill will be applied in Northern Ireland, and on this basis any divergence from the policy contained in the Westminster Bill has potential for a financial impact. This approach across devolved administrations was also recommended by Lord Hutton in his review.

HM Treasury has also made clear that failure to implement the required pension reforms to the timescales outlined in the Westminster Public Service Pensions Bill would have a detrimental financial impact for Northern Ireland funding. The Minister of Finance and Personnel provided figures of the potential cost of non-implementation or delay to the

Assembly on 26 November 2012. The cost of diverging from the policies or delaying their implementation could be in excess of £262m per year. In summary therefore, variations could be made from the core provisions in the Westminster Bill, (detail of these already supplied in earlier written submission). Such variations would however need to be considered in the context of the Executive decision of 8th March, and on the understanding of the financial consequences.

### **Scope for variance in scheme design - Secondary Legislation**

Secondary legislation will be required to amend the rules of each devolved public service pension scheme, to give effect to the reform measures carried in the Public Service Pensions Bill. This work will be taken forward by each of the Ministerial Departments which have individual responsibility for pension schemes. The secondary legislation will provide scope for each relevant Minister to consider what variations may be possible and appropriate for each of their schemes. Ministers are likely to give consideration to the approach taken to date in mirroring their comparable scheme in Great Britain when designing their Northern Ireland scheme and its regulations. The Coalition Government set out its preferred design for the schemes in Great Britain in November 2011<sup>1</sup> (a copy of the preferred scheme design is attached at Annex A). Scope exists for schemes to vary from the scheme design in scheme regulations to suit the requirements of the individual workforces. Following consultations with scheme representatives and TUS, scheme specific designs were developed for members of the NHS, Civil Service, Teachers and Local Government pension schemes which incorporate variations while remaining based on the principles contained in the Government's preferred design.

Ministers will need to take account of keeping within the parameters of cost, the overall core provisions set out in the primary legislation and the costs of changing their IT systems. It should be noted that the IT systems used by main schemes here are modelled on the IT systems for the Great Britain scheme. Examples of variations at Secondary Legislation stage are set out below.

### **Accrual Rate**

The accrual rate is the fractional rate at which benefits build up in the scheme. It is commonly expressed as a fraction of pensionable salary for each year. Example: For a teacher in a CARE scheme with an accrual rate of 1/57th who pays into the scheme for 20 years, their pension will be 1/57th of their first year's salary, plus 1/57th of their second year's salary, plus 1/57th of their third year's salary etc, up to and including 1/57th of their final year's salary. Variances in accrual rates exist across schemes; examples of the rates for the Civil Service, NHS, Teachers and Local Government schemes which will be established under the Westminster Bill are set out below. These rates could be varied in their application to Northern Ireland: however, the financial consequences of doing so would need to be considered carefully as this is a key factor in the design of a scheme, in determining the financial viability of a scheme, and subsequent level of employers' and employees' contributions.

| <b>Scheme</b>    | <b>Annual accrual rate</b> |
|------------------|----------------------------|
| Civil Service    | 1/43.1                     |
| NHS              | 1/54                       |
| Teachers         | 1/57                       |
| Local Government | 1/49                       |

1 Public Service Pensions; Good pensions that last – published 20 November 2011, [http://cdn.hm-treasury.gov.uk/pensions\\_publicservice\\_021111.pdf](http://cdn.hm-treasury.gov.uk/pensions_publicservice_021111.pdf)

### Annual revaluation of pension benefits while in service

Pension benefits accrued in public service schemes are uprated annually to take account of cost of living increases. Clause 9 of the Westminster Bill deals with the procedure for revaluing the accrued pension rights of active scheme members. This is not the uprating or indexation of pensions that are deferred or already in payment. In the Coalition Government's preferred scheme design benefits accrued by members who remain in service would be uprated in line with measured increases in earnings. Clause 9 of the Westminster Bill specifies that revaluation of pension benefits in service must be by reference to a change in prices or earnings (or both) in a given period. The Westminster Bill also contains provisions for HM Treasury to make orders to specify the percentage increase or decrease in prices or earnings for the purposes of this revaluation. Each of the proposed final scheme designs for the four main Great Britain schemes have agreed variances in the revaluation of benefits whilst remaining in service using the relevant HMT Treasury index measuring changes in consumer prices, as outlined in the table below:

| <b>Scheme</b>    | <b>Annual rate for Revaluation of accrued benefits(active members)</b> |
|------------------|------------------------------------------------------------------------|
| Civil Service    | Consumer Prices Index (CPI)                                            |
| NHS              | CPI + 1.5%                                                             |
| Teachers         | CPI +1.6%                                                              |
| Local Government | CPI                                                                    |

The HM Treasury indices referenced in the Westminster Bill currently apply in the Northern Ireland Schemes and the policy intention is that the draft Public Service Pensions Bill will reflect the current position. However schemes will have autonomy to vary the application of the indices in the same way as has been illustrated for the Great Britain Schemes above.

### Employee contribution rate

The Coalition Government's preferred scheme design sets average member contributions for the unfunded public service pension schemes at the level of the existing schemes. This is after the full increase of 3.2 percentage points from the current programme to increases employee contributions for public service schemes has been applied. The Coalition Government announced at budget 2011 that employee contribution rates for public service pension schemes would be increased by an average 3.2 percentage points over 3 years by 2015. The average employee contribution rates which will apply in the Civil Service, NHS, and Teachers in Great Britain from April 2015 are set out in the proposed final agreements for each scheme and are reproduced below:

| <b>Scheme</b> | <b>Average employee contribution rate in CARE schemes at April 2015</b> |
|---------------|-------------------------------------------------------------------------|
| Civil Service | 5.6%                                                                    |
| NHS           | 9.8%                                                                    |
| Teachers      | 9.6%                                                                    |

The Westminster Bill does not specify employee contribution rates for the schemes. The employee contribution rates will be determined in individual scheme regulations. The average rates specified in the table above are generally in line with the Coalition Government's preferred scheme design i.e. at the level of the existing schemes after the full increase of 3.2 percentage points from the programme to increase employee contributions for public service schemes has been applied, and within revised cost ceilings set by the Coalition Government in November 2011 for the Great Britain schemes.



The Departments which have policy responsibility for the Northern Ireland schemes will retain authority to vary the contribution rates which will apply in the CARE schemes from April 2015. This will be subject to the cost cap limits mechanism and the determination of scheme valuations. The financial consequences of any proposed variance at scheme level in contribution rates after April 2015 will need to be taken into account by each Minister who has responsibility for one of the public service schemes here.

### **Lump sum payments**

In the Coalition Government's preferred scheme design members would be given the option at retirement to convert £1 of annual pension into a £12 one-off lump sum payment in accordance with HMRC limits and regulations. This is known as commutation. The Westminster Bill does not specify the provisions which must apply in schemes for the provision of lump sum payment. Each of the Great Britain scheme designs offer some variation on the Coalition Government preferred design for optional commutation of pension to lump sum as outlined in the schemes proposed final agreements.

The Northern Ireland schemes currently contain provisions for commutation of pension to lump sum and will retain scope to vary these provisions, within the external limits and regulations imposed by HMRC, in the new schemes established under the proposed Assembly Bill.

### **Ancillary benefits**

Ancillary benefits include dependant pensions, ill health benefits and death benefits. In line with the policy intention in the Westminster Bill (stated at clause 3) the proposed Assembly Bill will include provisions which enable Departments with responsibility for public service schemes to make provision in scheme regulations which are designed for different purposes or cases (including different provision for different descriptions of persons) and which take account of existing scheme differences. This scope for variation will extend to ancillary benefits.

However, variations to Northern Ireland scheme designs from their comparable scheme in Great Britain would have to be considered in the context of the overall scheme valuation which will be subject to provisions for the valuation and cost control set out in the Bill.

### **Other areas where scope exists to vary from the Westminster approach**

**Re-employment** - Under the Westminster Bill schemes will retain authority in scheme regulations to vary provisions applying in schemes where members leave the scheme and rejoin. The Northern Ireland schemes will retain scope to vary these provisions in scheme regulations; and,

**Staff transfers** - The Westminster Bill contains new provisions which will enable members of public service pension schemes whose employment is subsequently transferred to the private sector to retain membership of the public service scheme operated by their previous employer.

This measure was recommended by the Public Service Pension Commission to promote increased plurality in the delivery of public services and the principle accepted by the Coalition Government following consultation on the existing Fair Deal mechanism which requires employers in the private sector to provide new employees transferring from public body employers with a broadly comparable pension arrangement. Schemes will be required to implement these provisions of the Westminster Bill in their scheme regulations.

The Assembly Public Service Pension Bill will contain equivalent provisions for the Northern Ireland schemes. Schemes will retain existing scope to vary processes for the transfer of employee benefits between public service schemes, subject to the application of existing statutory regulations for the transfer of pension rights.

In summary, schemes will have considerable scope to vary these factors at secondary legislation stage. In doing so, a key constraint will be any financial consequence.

**2. Information on the revised measures for management, regulation and administration of the various pension schemes.**

The Independent Public Service Pensions Commission identified a great variety of governance arrangements in the public service schemes. They flagged that the position contrasts with that of the trust based schemes in the private and public sector, which are required to have pension boards that are responsible for the operations of the schemes. The Pension regulator in turn plays an active role in overseeing the operation of trust based schemes and ensuring their compliance with pension's legislation.

The Commission recognised that there are valid reasons for the different governance models, but considered that lessons can be learned from the trustee model. They recommended that every public service pension scheme (and individual Local Government Pension Scheme fund) should have a properly constituted, trained and competent Pension Board, with member nominees, responsible for meeting good standards of governance, including effective administration. The Commission also recommended that a framework should be established to ensure independent oversight of governance, administration and data transparency of the public service pension schemes.

The Coalition Government accepted these recommendations. The intention is that every public service pension scheme with two members or more will be required to establish a Pension Board to ensure that the schemes are managed and administered effectively and efficiently. The Pension Regulator will be given a more active role in defining and regulating good standards of governance and administration in the public service pension schemes. Where the Pensions Regulators' existing powers relating to the administration and governance of pensions do not currently apply to the public schemes, they will be given equivalent powers.

The Department does not envisage that the cost of administering the schemes will increase as a result of these changes. Schemes should already be compliant with legislation and achieving good standards of administration. The changes are concerned with providing members and other taxpayers with assurance that those standards are being met across all schemes. There will be new costs for the Pensions regulator's role but the Department expects these to be insignificant.

For further reference, Clauses 4 – 7 of the Westminster Public Service Pensions Bill details the provisions on Governance and Pension Boards.

[www.publications.parliament.uk/pa/bills/lbill/2012-2013/0077/2013077.pdf](http://www.publications.parliament.uk/pa/bills/lbill/2012-2013/0077/2013077.pdf)

Officials are available and willing to provide further clarification as required.

Yours sincerely,

**Christine Pauley**

Acting Departmental Assembly Liaison Officer

## Annex A

### Government preferred scheme design for:

- **Scheme model** - a Career Average Revalued Earnings (CARE) pension scheme;
- **Accrual rate** - Public service workers benefits to be earned at a rate of 1/60ths of pensionable earnings each year;
- **Revaluation of accrued benefits while in service** - Public service workers will have their benefits increased each year they are working in the public services in line with earnings revaluation;
- **Scheme pension age** - a Normal Pension Age linked to State Pension Age (or 65, whichever is higher);
- **Revaluation of pensions in payment** - pensions in payment to increase in line with the Consumer Prices Index (CPI);
- **Revaluation of deferred benefits** - benefits earned by leavers to increase by CPI from the date of leaving until retirement;
- **Employee contribution rate** - average member contributions for the unfunded public service pension schemes set at the level of the existing schemes after the full increase of 3.2 percentage points from the current programme to increases employee contributions for public service schemes has been applied;
- **Additional scope for funded schemes** - in the funded Local Government Pension Scheme both member contributions and other adjustments to benefits would be reflected in cost ceilings following the outcome of the consultations on alternatives to contribution increases.
- **Lump sum payments** - members given the option at retirement to convert £1 of annual pension into a £12 one-off lump sum payment in accordance with HMRC limits and regulations;
- **Ancillary benefits** - ill-health, death and survivors benefits (ancillary benefits) to match those currently provided by schemes that are open to new members;
- **Re-employment** - members who leave the scheme and rejoin within 5 years to be able to link their new service with previous service, as if they had always been an active member;
- **Staff transfers** - members transferring between public service schemes to be treated as having continuous active service (which would include those transferring between schemes who had rejoined public service after a gap of less than 5 years); and,
- **Employer cost cap** - an employer contribution cap to provide backstop protection to the taxpayer against unforeseen costs and risks.

# Letter to DFP Committee on GAD assumptions - 1 March 2013

## **Assembly Section**

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Email: Judith.finlay@dfpni.gov.uk

Mr Shane McAteer  
Clerk  
Committee for Finance and Personnel  
Room 419  
Parliament Buildings  
Stormont

Our Re: MISC98/11-15

4 March 2013

Dear Shane

### **Northern Ireland Public Service Pensions**

At the Committee meeting on 9 January 2013, Corporate HR officials provided information on proposals for the introduction of a Public Service Pensions Bill in the Assembly. The Minister announced his intention to introduce this Bill in his speech to the Assembly on 26 November 2012. In this speech, the Minister also provided details to the Assembly of potential costs associated with failing to meet the HM Treasury deadline of April 2015 for the introduction of pension reform. Subsequently, the Department provided the Assembly Research and Information Service information in relation to the calculation of the estimated figures on 12 December 2012.

The Government Actuary's Department (GAD) provided data indicating, in broad terms, the financial impacts of the Public Service Pensions Bill provisions and in particular the quantitative analysis considering the savings in respect of pension rights earned after 2015. GAD adopted a simplified methodology to calculate the contribution rates for the Northern Ireland Health Service Pension Scheme based on percentage assumptions of membership retiring at normal pension age and leaving the scheme prior to normal pension age. DFP officials used this methodology to estimate costs for the other main Northern Ireland Public Service Pensions and the estimated costs were estimated to be in excess of £260m.

The Department has established a working group in conjunction with the Northern Ireland Committee of Irish Congress of Trade Unions (NIC-ICTU) to facilitate discussions with Trade Unions on the Public Service Pensions Bill. At a meeting of this group on 14 February NIC-ICTU requested sight of a letter, received by the Department from the Government Actuary's Department (GAD), which sets out the potential cost of not applying revised pension arrangements for the Northern Ireland Health and Social Care Scheme from April 2015. This correspondence has now been provided to NIC-ICTU for discussion at the next meeting scheduled for 5 March 2013.

I now attach, for the information of the Committee, the GAD letter of 5 October 2012 (Annex A) and a subsequent E-mail of 18 October (Annex B) which provides more detail and assurances of the figures provided.

Yours sincerely,

**Judith Finlay**

Departmental Assembly Liaison Officer

ANNEX A

PROTECT - POLICY



GOVERNMENT ACTUARY'S DEPARTMENT



Reference:

Margaret Coyle  
Department of Finance and Personnel NI  
by email to [margaret.coyle@dfpni.gov.uk](mailto:margaret.coyle@dfpni.gov.uk)

5 October 2012

Dear Margaret

**Potential costs of reformed pension schemes**

You have asked me to provide advice on the potential costs in Northern Ireland if public service pension schemes in Northern Ireland are not reformed in line with the proposals that the UK government currently has in relation to the schemes for which it has policy and legislative responsibility. I understand that this is in connection with the possibility of the Northern Ireland Assembly passing a legislative consent motion that would enable the Public Service Pensions Bill currently passing through the Westminster parliament to extend to Northern Ireland.

The Northern Ireland schemes covered by this letter are:

- > Health and Social Care Superannuation Scheme (HSCSS)
- > Teachers' Superannuation Scheme
- > Principal Civil Service Pension Scheme
- > Local Government Pension Scheme (LGPS)
- > Firefighters' Pension Scheme
- > Police Pension Scheme

This letter provides some figures indicating, in broad terms, the financial impacts of the Bill provisions and also discusses, on a qualitative basis, other changes that may lead to changes in employer costs.

**Changes already in train**

The Westminster government has made three significant changes which will affect the cost of the schemes that are not necessarily reflected in employer contribution rates paid currently in Northern Ireland. These are separate from the provisions in the Public Service Pensions Bill.

- > Since April 2011, pension increases have been linked to the CPI instead of the RPI. This has reduced pension scheme costs since CPI is expected to increase more slowly than RPI on average. I understand that this change is reflected in LGPS employer contributions but not, at this stage, for any of the other schemes.

Finlaison House, 15-17 Fumival Street, London, EC4A 3AB T: +44 (0)20 7211 2601 W: [www.gad.gov.uk](http://www.gad.gov.uk)  
Direct Line: +44 (0)20 7211 2683 Fax Number: +44 (0)20 7211 2978 Email: [james.pepler@gad.gov.uk](mailto:james.pepler@gad.gov.uk)

## PROTECT - POLICY

- > At the 2011 budget, the Chancellor announced that the discount rate used to value unfunded public service pension schemes would change to 3% in excess of CPI price increases (from 3.5% in excess of RPI increases). This does not affect benefits but does affect the actuarial calculation of their cost and will, all other things being equal, increase that cost and therefore employer contribution rates. Taken together, the pension increase and discount rate changes lead to an increase in employer costs. This discount rate is not relevant to LGPS which is funded.
- > Employee contribution rates increased in April 2012 for all schemes other than LGPS. The intention is that further increases will be applied in 2013 and 2014 so that the overall increase for the schemes that the UK government has responsibility for (other than LGPS) is worth 3.2% of pay. Northern Ireland schemes have implemented the same increases. The overall value may not be the same in Northern Ireland in terms of percentage of pay since the increases depend on employees' salaries which may be distributed differently. An increase in employee contribution rates means that employer contribution rates could fall, all other things being equal.

**Changes to scheme designs in consequence of the Public Service Pensions Bill**

The Public Service Pensions Bill would align normal retirement age with state pension age for all the pension schemes discussed in this letter other than the Firefighters' and Police schemes which would have a normal retirement age of 60 for retirements from active service. This will reduce the costs of these schemes as pensions will be paid for a shorter period of time. It will reduce the value of pension rights accrued in the future (all other things being equal), but may also be expected to reduce the value of pension rights already earned if members with rights earned before and after 2015 choose to claim their pre-2015 rights later than they would have if the scheme remained unreformed.

The quantitative analysis below considers the savings in respect of pension rights earned after 2015, but not the possible savings in respect of pre-2015 rights.

The Bill also requires schemes to be "career average revalued earnings" ("CARE") instead of "final salary" but leaves the details of the scheme to be specified in secondary legislation. The Nuvos section of PCSPS that new entrants have joined since 2007 is this type of scheme. The cost of a career average scheme depends on the accrual rate and the rate of revaluation of the pension rights while a member is in service. Each of the schemes for which the UK government has policy responsibility has proposed a different revaluation rate and a different accrual rate.

**Quantitative analysis**

This section of the letter discusses the potential impact on employer contributions of the changes to the Health and Social Care Superannuation Scheme that the Bill will enable. Future employer contributions will depend on the approach taken at future valuations, and we do not know what that approach will be (for example, under the Bill valuations must be carried out in accordance with Treasury directions, and we do not know what Treasury will direct). The costs in this letter are described in terms of the total cost of benefits being accrued by current employees expressed as a percentage of pay, and we can reasonably expect HMT directions to require costs in future valuations to be expressed in this format. These costs are borne by employees and employers combined in the form of the contributions that each pays.

Details of the design of the schemes valued and the approximations made are set out in the Annex to this letter. The costs in respect of the other Northern Ireland schemes will be different and we would be happy to provide estimates of the costs for those schemes.



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#### PROTECT - POLICY

The cost of the current HSCSS benefit design is about 28% of pay. This figure is higher than the current combined employer and employee contributions, for the reasons set out above.

The details of the "proposed final" NHS Pension Scheme in England and Wales are published here:

<http://www.parliament.uk/deposits/depositedpapers/2012/DEP2012-0454.pdf>

If the scheme were changed to fully reflect this design, then the cost would be about 21% of pay. Based on a HSCSS pensionable payroll of about £1.5 billion per annum, the savings forgone would be about £100 million per year. The savings forgone represent about one quarter of the total cost of the current scheme (7% of pay compared with 28% of pay), but a larger proportion of employer costs.

The figures above have been calculated using the new "SCAPE" discount rate set in 2011; have been calculated on an approximate basis and are not directly comparable with the employer costs currently being paid. If this scheme design is adopted in Northern Ireland, the costs calculated at that time are likely to be different to those calculated here due to the approximations made. It is not possible to say with certainty what that difference would be without carrying out more detailed calculations, but the difference could be of the order of up to 10% (ie the annual savings forgone in respect of HSCSS might be £10 million higher or lower than £100 million due to the approximations made).

The OBR's Fiscal Sustainability Report of 12 July 2012 noted that the reform of (all) schemes in line with the recommendations of "Good Pensions that Last"<sup>1</sup> would be expected to cause a 0.1 per cent of GDP fall in net spending, to around 0.9 per cent of GDP, i.e. a saving of about 10%.

The OBR projection is expressed in terms of the cash expenditure in benefits rather than the cost of benefits accruing so is not strictly comparable with the figures that we calculated. The savings in terms of employer contributions are greater than the savings noted in the OBR report for the following reasons:

- The 50 year projection period in the OBR report is not long enough for all the potential savings to be recognised; note that the report recognises that further savings may continue to emerge beyond the projection period.
- It is expected that the long term cash flow savings will be less than the impact on contributions, because the change in retirement age increases the period during which (notional) investment returns are earned and this effect further reduces the required contribution rate.
- The HSCSS has lower withdrawal rates and faster promotional pay progression than NHSPS (E&W), which means that the existing scheme is more expensive in Northern Ireland than England and Wales, but these features have less impact on the relative cost of the CARE scheme.

Note that these calculations consider only the savings in respect of pension rights earned after 2015, but not the possible savings in respect of pre-2015 rights discussed above. If these possible savings in respect of pre-2015 rights were allowed when employer contribution rates were set, then the savings to NI of implementing reforms (or the costs of not implementing them) would be greater.



## PROTECT - POLICY

### Transitional arrangements

The Bill allows for transitional arrangements and the UK government's proposal is that members of existing schemes on 1 April 2012 who have ten years or less to normal retirement age will be able to remain in their current scheme. A taper covering those with up to fourteen years to normal retirement age has also been proposed. This means that although the new schemes start in 2015, reduced contribution rates will not be fully realised until around 2022 when the last fully protected members reach normal retirement age and tapered members reach the end of their taper.

Savings in cashflow terms will take many years more to be realised since rights accrued before 2015 are to be protected.

### Cost of delaying reforms

If the proposed reforms were implemented with a delay, there would be a cost relative to implementation in 2015. For the HSCSS, this would be, broadly, £100m for each year that the implementation of a new scheme was postponed. This does not allow for the further cost of any reduction in savings if members with rights accrued prior to 2015 retire earlier as a result of a delay or any costs/savings due to transitional protection being amended.

In practice, actual employer costs will only change when a valuation is completed and contribution rates are changed. It is not clear how HM Treasury would seek to measure or reclaim any costs of postponing reforms, but HM Treasury may seek to have the extra costs reflected through the usual valuation process to set employer contributions. Treasury's usual policy is that employers should bear the cost of pensions as they accrue and therefore the natural extension of this would be that it would wish to reclaim the cost of higher pension accrual in Northern Ireland as the benefits accrue rather than gradually as this is reflected in higher benefits expenditure.

### Other changes in the Bill

The Bill will replace the "Cap and Share" arrangements that some of the schemes currently have in force with an "employer cap". The purpose of both of these arrangements is to cap the maximum employer contribution rate that would be paid. Contributions or benefits might be adjusted to keep employer costs within the desired range. For most schemes covered by the "cap and share" policy, the cap was set at the most recent valuation and the valuations that were halted by HMT were the first at which "cap and share" may have led to a change in benefits or contributions. HMT has not yet set out the details of how the "employer cap" will work in practice so it is not possible to quantify the financial effect of this provision. The sort of effect that might lead to the employer cap impacting on contributions or benefits is future mortality improvements or a change in the demographic characteristics of a scheme's membership.

Another change that the Bill would make is that the assumptions to be adopted in valuations and the details of the "employer cost cap" would be set by HM Treasury. This could have a very large impact on employer costs (as the change to the discount rate has done) but it is not possible to say in advance what this would be. For the LGPS, this provision does not cover valuations carried out to calculate employer contribution rates but it does include valuations carried out for the "employer cost cap" process. This provision explicitly gives a power to HM Treasury. It may, however, be the case that HM Treasury currently has the ability to influence valuations of NI schemes in a similar way through less direct means. In practice, I understand that most of the unfunded Northern Ireland schemes followed the "SCAPE" methodology previously set out by HMT so the impact may not be significant.



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#### PROTECT - POLICY

##### **Other future changes that may impact on employer costs**

It is worth noting that one of the aspects of the "single tier pension" proposals that DWP have consulted on in Great Britain involves the abolition of salary-related contracting-out. The timetable for this could involve implementation from 2015. If this were to happen, employers and employees would no longer benefit from the NI rebate. The rebate is currently 1.4% of pay in the relevant bands for employees and 3.4% for employers.

State pensions do not accrue in the same way as occupational pension schemes, and the implications for "accrued" S2P and SERPS pensions are not yet clear.

##### **Other limitations**

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Other than DFPNI, no person or third party is entitled to place any reliance on the contents of this letter, except to any extent explicitly stated herein, and GAD has no liability to any person or third party for any act or omission taken, either in whole or part, on the basis of this letter.

Please let me know if you have any comments or if you would like us to consider the costs of the proposed designs for other schemes.

Yours sincerely

**James Pepier**  
Deputy Chief Actuary



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## Annex B

**From:** James Pepler [mailto:James.Pepler@gad.gov.uk]  
**Sent:** 18 October 2012 10:54  
**To:** Nesbitt, Grace; Coyle, Margaret  
**Cc:** Miskelly, Margaret; Michael Scanlon; George Russell; Ian Boonin; PCSPS(NI)  
**Subject:** PROTECT - SCHEME MANAGEMENT: RE: Revised Scheme Costings

Grace

We are aware that at a recent MOCOP teleconference the advice in our letter of 5 October and, in particular the figure of £100m, was discussed and you also mentioned this figure had been used to answer an Assembly Question last week. I understand it was suggested in the MOCOP meeting that the figures were higher than expected. This email provides some further assurance.

Our letter discusses some of the reasons for higher cost in NI relative to E&W, including the differences in demographic assumptions in Northern Ireland and England and Wales.

The £100 million figure is the annual cost of not implementing reforms in the long term. It is then important to understand the sensitivity of this figure in the short term to the policy stance taken towards transitional protection. Broadly speaking, the proposal in E&W is that members of existing schemes on 1 April 2012 who have ten years or less to normal retirement age will be able to remain in their current scheme (with a taper arrangement for those up to 13-14 years from normal retirement age).

If all aspects of reform are delayed by 1 year, including both the date of implementation of new scheme and transitional arrangements then, as stated in our letter of 5 Oct 2012, the cost relative to implementation in 2015 for the HSCSS would be, broadly, £100m for each year that the implementation of a new scheme was postponed. That is, if the new scheme was implemented from April 2016 (rather than April 2015) and members within 10 years of pension age in April 2013 were protected (rather April 2012) plus a 3-4 year taper then the cost for HSCSS would be, broadly, £100m. This figure is a capitalised cost but includes the cost of additional accrual in 2015/16 and for the following seven years for the additional members who would be protected compared with England and Wales. It is not clear whether HMT would seek to obtain this money entirely in 2015/16 or over the period 2015/16 to 2022/23.

Alternatively, if the new scheme was implemented from April 2016 (rather than April 2015) but protection was as for England and Wales (i.e. members within 10 years of pension age in April 2012 were protected plus a 3-4 year taper in addition) then the cost for HSCSS would be less than £100m. Please let us know if you would like us to calculate any figures for this latter scenario.

I note that the answer to the AQ, which we did not see beforehand, did not go into this level of detail, perhaps deliberately so. Nevertheless, I think it is important to have the background set out in this e-mail to help respond to possible follow-up questions.

(This e-mail should be read in conjunction with our 5 October letter.)

Regards

James

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## 2nd Letter to DFP Committee on GAD assumptions

### **Assembly Section**

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Mr Shane McAteer  
Clerk  
Committee for Finance and Personnel  
Room 419  
Parliament Buildings  
Stormont

Our Ref MISC98/11-15

6 March 2013

Dear Shane

### **Northern Ireland Public Service Pensions (Additional GAD Information)**

I refer to my previous letter of 4 March 2013 where I had attached, for the information of the Committee, the GAD letter of 5 October 2012 (Annex A) which set out the potential cost of not applying revised pension arrangements for the Northern Ireland Health and Social Care Scheme from April 2015 and a subsequent E-mail of 18 October (Annex B) which provided more detail and assurances of the figures.

As previously indicated the Government Actuary's Department (GAD) provided data indicating, in broad terms, the financial impacts of the Public Service Pensions Bill provisions and in particular the quantitative analysis considering the savings in respect of pension rights earned after 2015. GAD adopted a simplified methodology to calculate the contribution rates for the Northern Ireland Health Service Pension Scheme based on percentage assumptions of membership retiring at normal pension age and leaving the scheme prior to normal pension age.

Corporate HR Officials have now supplied me with further GAD correspondence additional to the attachments in my original letter to you on 4 March 2013. It was the first correspondence letter issued to officials on 3 October 2012.

The letter of 5 October 2012 was an update on the letter of 3 October 2012 but as the GAD correspondence of 3 October includes an Annex on the Contribution Rates Calculation Corporate HR Officials consider the attached additional information would be helpful in understanding the methodology used.

Therefore, I now attach for your information the GAD correspondence and Annex of 3 October 2012. Although, the correspondence retains a draft watermark, this is indeed the final version of the correspondence.

This additional information has also been provided to NIC-ICTU for further discussions at the Scheme Officials/ NIC-ICTU Public Service Pensions Bill meetings.

Yours sincerely,

**Judith Finlay**

Departmental Assembly Liaison Officer

## PROTECT - POLICY



GOVERNMENT ACTUARIES DEPARTMENT



## Reference:

DRAFT

Margaret Coyle  
Department of Finance and Personnel NI

by email to [margaret.coyle@dfpni.gov.uk](mailto:margaret.coyle@dfpni.gov.uk)

3 October 2012

Dear Margaret

### Potential costs of reformed pension schemes

You have asked me to provide advice on the potential costs to Northern Ireland if public service pension schemes in Northern Ireland are not reformed in line with the proposals that the UK government currently has in relation to the schemes for which it has policy responsibility. This is in connection with the possibility of the Northern Ireland Assembly passing a legislative consent motion that would enable the Public Service Pensions Bill currently passing through the Westminster parliament to extend to Northern Ireland.

The Northern Irish schemes covered by this letter are:

- > Health and Social Care Superannuation Scheme (HSCSS)
- > Teachers' Superannuation Scheme
- > Principal Civil Service Pension Scheme
- > Local Government Pension Scheme (LGPS)
- > Firefighters' Pension Scheme
- > Police Pension Scheme

This letter provides some figures indicating the financial impacts of the Bill provisions and also discusses other changes that may lead to changes in employer costs on a qualitative basis.

### Changes already in train

The Westminster government has made three significant changes which will affect the cost of the schemes that are not necessarily reflected in employer contribution rates paid currently:

Since April 2011, pension increases have been linked to the CPI instead of the RPI. This has reduced pension scheme costs since CPI is expected to increase more slowly than RPI on average. This is reflected in LGPS employer contributions but not for any of the other schemes.

At the 2011 budget, the Chancellor announced that the discount rate used to value public sector pension schemes would change to 3% in excess of price increases. This does not affect benefits but does affect the actuarial calculation of their cost and will increase that cost and therefore

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employer contribution rates. Taken together the pension increase and discount rate changes lead to an increase in employer costs. This discount rate is not relevant to LGPS which is funded.

Employee contribution rates increased in April 2012 for all schemes other than LGPS. The intention is that further increases will be applied in 2013 and 2014 so that the overall increase for the schemes that the UK government has responsibility for (other than LGPS) is worth 3.2% of pay. Northern Ireland schemes have implemented the same increases. The overall value may not be the same in Northern Ireland in terms of percentage of pay since the increases depend on employees' salaries which may be distributed differently. An increase in employee contribution rates means that employer contribution rates could fall, all other things being equal.

### Changes to scheme designs enabled by the Public Service Pensions Bill

The Public Service Pensions Bill would change normal retirement age to equal state pension age for all the pension schemes discussed in this letter other than the Firefighters' and Police schemes which would have a normal retirement age of 60. This will reduce the costs of these schemes as pensions will be paid for a shorter period of time. This will reduce the value of pension rights accrued in the future (all other things being equal) but may also be expected to reduce the value of pension rights already earned if members with rights earned before and after 2015 choose to claim their pre-2015 rights later than they would have if the scheme remained unreformed. The quantitative analysis below considers the savings in respect of pension rights earned after 2015, but not the possible savings in respect of pre-2015 rights.

The Bill also changes schemes to be "career average revalued earnings" ("CARE") instead of "final salary" but leaves the details of the scheme to be specified in secondary legislation. The Nuvos section of PCSPS that new entrants have joined since 2007 is this type of scheme. The cost of a career average scheme depends on the accrual rate and the rate of revaluation of the pension rights while a member is in service. Each of the schemes for which the UK government has policy responsibility have proposed a different revaluation rate and a different accrual rate.

### Quantitative analysis

This section of the letter discusses the potential impact on employer contributions of the changes to the Health and Social Care Superannuation Scheme that the Bill will enable. The costs are described in terms of the total cost of the scheme (borne by employees and employers combined) expressed as a percentage of pay. The figures have been calculated using the new "SCAPE" discount rate set in 2011 and have been calculated on an approximate basis and are not directly comparable with the employer costs currently being paid. If this scheme design is adopted in Northern Ireland, the costs calculated at that time are likely to be different to those calculated here due to the approximations made. Details of the design of the schemes valued and the approximations made are set out in the Annex to this letter. The costs of other schemes will be different and we would be happy to provide estimates of the costs of those schemes.

The cost of the current HSCSS benefit design is about 28% of pay. This figure is higher than the current combined employer and employee contributions, for the reasons set out above.

The details of the "proposed final" NHS Pension Scheme in England and Wales are published here:

<http://www.parliament.uk/deposits/depositedpapers/2012/DEP2012-0454.pdf>

If the scheme were changed to fully reflect this design, then the cost would be about 21% of pay. Based on a HSCSS pensionable payroll of about £1.5 billion per annum, the savings forgone would be about £100 million per year. The savings forgone represent about one quarter of the cost of the current scheme (7% of pay compared with 28% of pay).



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The OBR's Fiscal Sustainability Report of 12 July 2012 noted that the reform of schemes in line with the recommendations of "Good Pensions that Last"<sup>1</sup> causes a 0.1 per cent of GDP fall in net spending, to around 0.9 per cent of GDP, ie a saving of about 10%.

The savings in terms of employer contributions are greater than the savings noted in the OBR report for the following reasons:

- The 50 year projection period in the OBR report is not long enough for all the potential savings to be recognised; note that the report recognises that further savings may continue to emerge beyond the projection period.
- It is expected that the long term cash flow savings will be less than the impact on contributions, because the change in retirement age increases the period during which (notional) investment returns are earned and this effect further reduces required contribution rate.
- The HSCSS has lower withdrawal rates and faster promotional pay progression than NHSPS (E&W), which means that the existing scheme is more expensive in Northern Ireland than England and Wales, but these features have less impact on the relative cost of the CARE scheme.

Note that these calculations consider only the savings in respect of pension rights earned after 2015, but not the possible savings in respect of pre-2015 rights discussed above. If these possible savings in respect of pre-2015 rights were allowed when employer contribution rates were set, then the savings to NI of implementing reforms (or the costs of not implementing them) would be greater.

**Transitional arrangements**

The Bill allows for transitional arrangements and the UK government's proposal is that members of existing schemes on 1 April 2012 who have ten years or less to normal retirement age will be able to remain in their current scheme. A taper covering those with up to fourteen years to normal retirement age has also been proposed. This means that although the new schemes start in 2015, reduced contribution rates will not be fully realised until around 2022 when the last fully protected members reach normal retirement age and tapered members reach the end of their taper.

Savings in cashflow terms will take many years more to be realised since rights accrued before 2015 are to be protected.

**Other changes in the bill**

The Bill will replace the "Cap and Share" arrangements that some of the schemes currently have in force with an "employer cap". The purpose of both of these arrangements is to cap the maximum employer contribution rate that would be paid. Contributions or benefits might be adjusted to keep employer costs within the desired range. For most schemes covered by the "cap and share" policy, the cap was set at the most recent valuation and the valuations that were halted by HMT were the first at which "cap and share" may have led to a change in benefits or contributions. HMT has not yet set out the details of how the "employer cap" will work in practice so it is not possible to quantify the financial effect of this provision. The sort of effect that might lead to the employer cap impacting on contributions or benefits is future mortality improvements or a change in the demographic characteristics of a scheme's membership.

<sup>1</sup> [http://www.hm-treasury.gov.uk/d/pensions\\_publicservice\\_021111.pdf](http://www.hm-treasury.gov.uk/d/pensions_publicservice_021111.pdf)



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Another change that the Bill would make is that the assumptions to be adopted in valuations and the details of the "employer cost cap" would be set by HM Treasury. This could have a very large impact on employer costs (as the change to the discount rate has done) but it is not possible to say in advance what this would be. For the LGPS, this provision does not cover valuations carried out to calculate employer contribution rates but it does include valuations carried out for the "employer cost cap" process. This provision explicitly gives a power to HM Treasury. It may, however, be the case that HM Treasury currently has the ability to influence valuations of NI schemes in a similar way through less direct means. In practice, I understand that most of the unfunded Northern Ireland schemes followed the "SCAPE" methodology previously set out by HMT so the impact may not be significant.

#### **Other future changes that may impact on employer costs**

It is worth noting that one of the aspects of the "single tier pension" proposals that DWP have consulted on in Great Britain involves the abolition of salary-related contracting-out from 2015. If this were to happen, employers and employees would no longer benefit from the NI rebate. The rebate is currently 1.4% of pay in the relevant bands for employees and 3.4% for employers.

State pensions do not accrue in the same way as occupational pension schemes, and the implications for "accrued" S2P and SERPS pensions are not yet clear.

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Please let me know if you have any comments or if you would like us to consider the costs of the proposed designs for other schemes.

Yours sincerely

**James Pepler**  
Deputy Chief Actuary

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## Annex: Contribution rate calculations

We have calculated the required contribution rate for the existing HSCSS and for the proposed design for the NHSPS(E&W) from April 2015. We have used financial assumptions consistent with the cost ceilings produced by the UK Government and demographic assumptions appropriate to HSCSS.

We have adopted a simplified methodology to calculate these contribution rates. We have assumed that all members are aged 42, and that 11% of members leave the scheme aged 48 and the remainder retire at or after the scheme's Normal Pension Age. The following table sets out the element of the scheme design which have been allowed for, and assumptions used.

| Scheme                                                                 | HSCSS<br>NPA 60 | HSCSS<br>NPA 65         | Proposed<br>NHSPS(E&W) |
|------------------------------------------------------------------------|-----------------|-------------------------|------------------------|
| <b>Scheme design</b>                                                   |                 |                         |                        |
| Basic design                                                           | Final Salary    | Final Salary            | CARE                   |
| Normal Pension Age                                                     | 60              | 65                      | SPA                    |
| Accrual rate (for member's pension)                                    | 80ths           | 60ths                   | 54ths                  |
| Accrual rate (for spouse's pension)                                    | 160ths          | 160ths                  | 160ths                 |
| Automatic Lump Sum                                                     | 3 x pension     | None                    | None                   |
| Commutation factor                                                     | 12:1            | 12:1                    | 12:1                   |
| Revaluation of benefits in service                                     | Final Salary    | Final Salary            | CPI + 1.5%             |
| Revaluation of benefits in deferment                                   | CPI             | CPI                     | CPI                    |
| <b>Financial assumptions</b>                                           |                 |                         |                        |
| Discount rate                                                          |                 | 5%                      |                        |
| Earnings increases                                                     |                 | 4¼%                     |                        |
| CPI                                                                    |                 | 2%                      |                        |
| Discount rate net of earnings                                          |                 | ¾%                      |                        |
| Discount rate net of CPI                                               |                 | 3%                      |                        |
| <b>Demographic assumptions</b>                                         |                 |                         |                        |
| Age of member                                                          |                 | 42                      |                        |
| Male to Female ratio (weighted by pay)                                 |                 | Males: 30%; Females 70% |                        |
| Proportion leaving before retirement                                   |                 | 11%                     |                        |
| Age on leaving before retirement                                       |                 | 48                      |                        |
| Promotional salary increases to leaving before retirement              | 10%             | 10%                     | N/A                    |
| Age at retirement                                                      | 63              | 65                      | 67                     |
| Promotional salary increases to retirement                             | 20%             | 20%                     | N/A                    |
| Proportion of pension commuted at retirement                           | 10%             | 27%                     | 27%                    |
| Proportion married or with an eligible partner at retirement           |                 | 100%                    |                        |
| <b>Required contribution rate<br/>(employer and employee combined)</b> | <b>28%</b>      | <b>28%</b>              | <b>21%</b>             |

The contribution rates emerging from the next valuations of the HSCSS will differ from the figures above for the following reasons:

- The future design of the HSCSS may differ from the designs above.
- In particular, the future design of the HSCSS may include transitional arrangements with some members in the existing schemes and others in the reformed schemes.



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- The figures above represent only the costs of accruing benefits, contribution rates emerging from the future valuations may include an adjustment for any (notional) surplus or deficit.
- The figures above are based on a standard actuarial methodology known at the Projected Unit Method consistent with UK Government cost ceilings, future valuations may use a different methodology.
- The above calculations assume that all members are aged 42, and that they either leave at age 48 or contribute to work until retirement; future valuations will consider a full range of member ages and possible future exits.
- In particular, the above calculations ignore ill health retirement and death in service; future valuations will allow for these.
- The above calculations are based on assumptions used for cost ceilings or those adopted for the largest group of members in the most recent HSCSS valuation (as at 31 March 2004). Future valuations may adopt different assumptions.

The above list may not be exhaustive.



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# Response from Judith Finlay to Shane McAteer (Info for DFP Committee)

**Assembly Section**

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email: Judith.finlay@dfpni.gov.uk

Mr Shane McAteer  
Clerk  
Committee for Finance and Personnel  
Room 419  
Parliament Buildings  
Stormont

3 April 2013

Dear Shane,

**Public Service Pensions Reform Bill**

Your letter dated 4 March 2013 refers.

Following its meeting on 27 February 2013 with trade union representatives, the Committee for Finance and Personnel sought the following information from the Department:

- a comprehensive list of all the pension schemes and associated stakeholders affected by the Bill and the implications it will have for each scheme;
- clarification on how the drafting of the secondary legislation will be sequenced in relation to the Bill; and
- full details of how the potential cost of £262m per annum to the Northern Ireland block grant from a failure to implement the reforms has been calculated and clarification on whether this amount in deduction to the block grant will be imposed on the Executive by HM Treasury in such circumstances.

**Effect of the Bill on pension schemes**

A list of pension schemes and associated stakeholders, identified as being affected by the proposed Public Service Pensions Bill is attached at Annex A. These schemes have been identified by each of the Northern Ireland Departments in response to a request from officials in Civil Service Pensions. The main public service pension schemes will be reformed and DFP Officials are currently working with Departments to refine the list of additional schemes to be notified to the Office of the Legislative Counsel for inclusion in a schedule to the Public Service Pensions Bill.

The implications for each scheme are set out below. Schemes would be reformed in line with the core provisions of the Public Service Pensions Bill to be introduced in the Northern Ireland Assembly, which are as follows:

- a move to a Career Average Revaluated Earnings (CARE) scheme model of pension saving;
- a direct link to equalise schemes' Normal Pension Ages with the State Pension Age (except for the police and fire and rescue services);
- a Normal Pension Age of 60 (subject to regular review) for the police and fire and rescue services;

- transitional protection measures for scheme members who are within 10 years of their existing Normal Pension Age on 1 April 2012; These groups would remain in the existing schemes (except for the local government scheme, where transitional protection is to be provided by means of an underpin). Those within a further 3-4 years of normal pension age would have an option for a delayed transition to the new scheme;
- a final salary link for any final salary pension accrued prior to the date at which the new schemes will commence;
- a scheme cost cap with a default mechanism to maintain employer scheme costs within set cost floor and ceiling limits;
- extension of scheme access arrangements to allow public service workers whose employment is compulsorily transferred to a new employer to retain membership of a public service scheme; and
- revised measures for the management, regulation and administration of schemes.

### **Secondary Legislation**

Following enactment of the Bill, secondary legislation will be required to amend the rules of each devolved public service pension scheme to give effect to the reform measures. This work will be taken forward by each of the Ministerial Departments which have individual responsibility for pension schemes. It is estimated that this process may take up to 10 months to complete. Some initial drafting of the secondary legislation could take place in tandem with the passage of the Bill in the Assembly. However, final drafts, forming the basis for consultation, will not be possible until such time as the Primary legislation has completed the Assembly legislative process and associated scrutiny. The current, very challenging, timetable estimates that the requisite secondary legislation and revisions to schemes' administrative processes will be in place by February 2015.

### **Potential Cost of failure to implement reforms**

The information requested in relation to the calculation of the estimated cost of failing to implement the reforms was sent to the Committee on 4 March 2013 and 6 March 2013.

It should be noted that these estimates are based on assumptions used for cost ceilings and the most recent HSC valuation (as at 31 March 2004) and therefore should only be a guide to savings made as future valuations may adopt different assumptions.

On 3 December 2012 the Chief Secretary to the Treasury confirmed in writing to the Minister that a failure or delay in passing the necessary legislation to implement the pensions reforms in line with the deadlines contained in the Westminster Bill will result in a proportionate reduction in the Northern Ireland block grant. The Minister has advised that accountable Ministers who subsequently fail to deliver the required amendments to their schemes will have to shoulder any additional financial pressures.

Yours sincerely,

**Judith Finlay**

Departmental Assembly Liaison Officer

| Pension scheme                                                               | Stakeholders                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
|------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Principal Civil Service Pension Scheme (Northern Ireland) [PCSPS(NI)]</b> | <p>Northern Ireland Civil Servants</p> <p><b>Offices and Employments also Covered by the PCSPS(NI) (Listed at Schedule 1 to the Superannuation (Northern Ireland) Order 1972</b></p> <p><b>Museums</b></p> <p>Employment by the Board of Trustees of the National Museums and Galleries of Northern Ireland.</p> <p><b>Assembly Offices</b></p> <p>Clerk to the Assembly<br/> Clerk-Assistant of the Assembly<br/> Second Clerk-Assistant of the Assembly<br/> Fourth Clerk at the Table<br/> Committee Clerk<br/> Librarian<br/> Assistant Librarian<br/> Editor, Deputy Editor and Assistant Editor of Official Report of Debates<br/> Reporter<br/> Examiner of Statutory Rules for Northern Ireland</p> <p><b>Offices on the Planning Appeals Commission held under Schedule 3 to the Planning (Northern Ireland) Order 1972</b></p> <p>Chief Commissioner<br/> Chief Professional Commissioner<br/> Senior Professional Commissioner<br/> Professional Commissioner<br/> Principal Professional Commissioner</p> <p><b>Other Offices and Employments</b></p> <p>Police Complaints Board for Northern Ireland</p> <p>Employment by the Commissioner for Children and Young People for Northern Ireland</p> <p>Employment in the Equality Commission for Northern Ireland</p> <p>Employment in the Fair Employment Agency established under the Fair Employment (Northern Ireland) Act 1976</p> <p>Chairman of the Fair Employment Agency</p> <p>Employment in the Labour Relations Agency established under the Industrial Relations (Northern Ireland) Order</p> <p>Chairman of the Labour Relations Agency</p> <p>Employment in the Equal Opportunities Commission established under the Sex Discrimination (Northern Ireland)</p> <p>Chairman of the Equal Opportunities Commission for Northern Ireland</p> <p>Employment by the Northern Ireland Assembly Commission</p> <p>Employment in the Northern Ireland Economic Development Office incorporated on 4 October 1978 under the Companies Act Northern Ireland) 1960</p> <p>Employment in the General Consumer Council for Northern Ireland established under the General Consumer Council (NI) Order 1984</p> <p>Office of Director General of Electricity Supply for Northern Ireland established under</p> <p>the Electricity (Northern Ireland) Order 1992</p> <p>Office of Chairman of the Consumer Committee for Electricity</p> <p>Employment in Invest Northern Ireland</p> <p>Employment in the Northern Ireland Judicial Appointments Commission</p> |

| Pension scheme                                                                             | Stakeholders                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
|--------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Principal Civil Service Pension Scheme (Northern Ireland) [PCSPS(NI)] - (continued)</b> | <p>Employment in the Northern Ireland Museums Council</p> <p>Employment in the Commission for Racial Equality (Northern Ireland)</p> <p>Secretary to The Mental Health Commission</p> <p>Chief Commissioner of the Equality Commission for Northern Ireland</p> <p>Employment by the Northern Ireland Social Care Council</p> <p>Chief Executive to the Mental Health Commission</p> <p>Employment by the Northern Ireland Practice and Education Council for Nursing and Midwifery</p> <p>Employment by the Northern Ireland Health and Personal Social Services Regulation and Improvement Authority</p> <p>Employment in the Economic Research Institute of Northern Ireland Limited</p> <p>Employment in the Office of the Commissioner for Children and Young People for Northern Ireland</p> <p>Commissioner for Children and Young People for Northern Ireland</p> <p>Employment by the Police Service of Northern Ireland as a civilian direct recruit</p> <p>Employment in the office of the Chief Electoral Officer for Northern Ireland</p> <p>Employment in the Agri-food and Biosciences Institute</p> <p>Employment by the Commission for Victims and Survivors for Northern Ireland</p> <p>Employment in the Regional Health and Social Care Board</p> <p>Employment in the Regional Agency for Public Health and Social Well-being</p> <p>Employment in the Regional Business Services Organisation</p> <p>The Director of Public Prosecutions for Northern Ireland</p> <p>The Deputy Director of Public Prosecutions for Northern Ireland</p> <p>Commissioner for Older People for Northern Ireland</p> <p>Chief Inspector of Criminal Justice in Northern Ireland</p> <p>Employment by the Chief Inspector of criminal Justice in Northern Ireland</p> <p>Police Ombudsman for Northern Ireland</p> <p>Employment by the Police Ombudsman for Northern Ireland</p> <p>Commissioner of the Northern Ireland Law Commission</p> <p>Employment by the Northern Ireland Law Commission</p> <p>Employment in the Charity Commission for Northern Ireland</p> <p>Victims and Survivors Service</p> <p>Northern Ireland Judicial Appointments Commission</p> <p>Office of the Attorney General for Northern Ireland (Staff)</p> <p>Office of the Commissioner for Public Appointments (Northern Ireland)</p> <p>Maze Long Kesh Development Corporation</p> |



| <b>Pension scheme</b>                                     | <b>Stakeholders</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
|-----------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Local Government Pension Scheme (Northern Ireland)</b> | <p>Northern Ireland Local Government Officers' Superannuation Committee</p> <p>Local Government Staff Commission</p> <p>Probation Board Northern Ireland</p> <p>Northern Ireland Legal Services Commission</p> <p>Northern Ireland Housing Executive</p> <p>ILEX Urban Regeneration Company Limited</p> <p>Northern Ireland Transport Holding Company</p> <p>Northern Ireland Fishery Harbour Authority</p> <p>Livestock and Meat Commission for Northern</p> <p>Community Relations Council</p> <p>Northern Ireland Tourist Board</p> <p>CITB – Construction Skills NI</p> <p>The Governors of the Armagh Observatory and Planetarium</p> <p>Libraries Northern Ireland</p> <p>Sport Northern Ireland</p> <p>Sports Council Northern Ireland</p> <p>Education and Library Boards (Belfast, North Eastern, South Eastern, Southern and Western)</p> <p>Council for the Curriculum, Examinations and Assessment</p> <p>Council for Catholic Maintained Schools (CCMS)</p> <p>Middletown Centre for Autism</p> <p>Voluntary Grammar Schools</p> <p>Grant Maintained Integrated Schools</p> <p>Staff Commission Education and Library Boards</p> <p>General Teaching Council NI</p> <p>NI Council for Integrated Education</p> <p>Youth Council for NI</p> <p>Comhairle na Gaelscolaíochta</p> <p>Further Education Colleges: (non teaching staff)</p> <ul style="list-style-type: none"> <li>• Northern Regional College</li> <li>• Belfast Metropolitan College</li> <li>• South Eastern Regional College</li> <li>• Stranmillis University College</li> <li>• North West Regional College</li> <li>• Southern Regional College</li> <li>• South West College</li> </ul> |

| <b>Pension scheme</b>                              | <b>Stakeholders</b>                |
|----------------------------------------------------|------------------------------------|
| Police Pension Scheme<br>New Police Pension Scheme | Police Service Of Northern Ireland |

| <b>Pension scheme</b>                         | <b>Stakeholders</b>            |
|-----------------------------------------------|--------------------------------|
| Northern Ireland Water Limited Pension Scheme | Northern Ireland Water Limited |

| <b>Pension scheme</b>      | <b>Stakeholders</b>                                                                                                                                                                                                                            |
|----------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| North/South Pension Scheme | Waterways Ireland (WI);<br>The Food Safety Promotion Board (FSPB);<br>The Trade and Business Development Body (TBDB);<br>The Special EU Programmes Body (SEUPB);<br>The North/South Language Body (NSLB); and<br>Tourism Ireland Limited (TIL) |

| <b>Pension scheme</b>                     | <b>Stakeholders</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
|-------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Northern Ireland Teacher's Pension Scheme | Education and Library Boards (Belfast, North Eastern, South Eastern, Southern and Western)<br>Council for the Curriculum, Examinations and Assessment<br>Council for Catholic Maintained Schools (CCMS)<br>Middletown Centre for Autism<br>Voluntary Grammar Schools<br>Grant Maintained Integrated Schools<br>Further Education Colleges: (academic and related staff) <ul style="list-style-type: none"> <li>• Northern Regional College</li> <li>• Belfast Metropolitan College</li> <li>• South Eastern Regional College</li> <li>• Stranmillis University College</li> <li>• North West Regional College</li> <li>• Southern Regional College</li> <li>• South West College</li> </ul> |

| <b>Pension scheme</b>                                                    | <b>Stakeholders</b>                      |
|--------------------------------------------------------------------------|------------------------------------------|
| The Firefighters' Pension Scheme<br>The New Firefighters' Pension Scheme | Northern Ireland Fire and Rescue Service |

| <b>Pension scheme</b>                       | <b>Stakeholders</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
|---------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Health and Social Care (HSC) Pension Scheme | Belfast HSC Trust , South Eastern HSC Trust, Northern HSC Trust, Southern HSC Trust, Western HSC Trust<br>Health and Social Care Board<br>Patient and Client Council<br>Public Health Agency<br>Business Services Organisation<br>Northern Ireland Ad Litem Agency<br>Northern Ireland Blood Transfusion Agency<br>Northern Ireland Ambulance Service Trust<br>Northern Ireland Practice and Education Council for Nursing and Midwifery<br>Northern Ireland Medical and Dental Training Agency<br>Regulation and Quality Improvement Authority<br>Northern Ireland Social Care Council |

| <b>Pension scheme</b>                           | <b>Stakeholders</b> |
|-------------------------------------------------|---------------------|
| Foyle Fisheries<br>Commission Pension<br>Scheme | The Loughs Agency   |

| <b>Pension scheme</b>                                    | <b>Stakeholders</b>                 |
|----------------------------------------------------------|-------------------------------------|
| Ulster Supported<br>Employment Limited<br>Pension Scheme | Ulster Supported Employment Limited |

## Letter to DFP Committee Clerk on initial outcome of response to Consultation on PSP Bill

### **Assembly Section**

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Mr Shane McAteer  
Clerk  
Committee for Finance and Personnel  
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Stormont

22 April 2013

Dear Shane

### **Principal Civil Service Pension Scheme (Northern Ireland) – Department of Finance and Personnel Initial Outcome of Response to Consultation on Proposed Public Service Pensions Bill.**

The purpose of the proposed Bill will be to implement the Executive decision made on 8 March 2012 to:

- i) commit to the policy for a new career average revalued earnings (CARE) scheme model with pension age linked to State Pension Age to be adopted for general use in the public service schemes; and,
- ii) adopt this approach consistently for each of the different public sector pension schemes in line with their equivalent scheme in Great Britain and not to adopt different approaches for Northern Ireland.

The Department of Finance and Personnel launched the Policy Consultation document on 22 January 2013 with a closing date of 15 April 2013. The Consultation document was circulated to all members of the Principal Civil Service Pension Scheme and individual letters were issued to other Public Service Pension Scheme departmental officials notifying them of the consultation exercise the Department of Finance and Personnel was engaging in on the policy and core provisions which will be contained in the Bill. The letters advised the Departments to issue notification of the consultation to relevant groups in line with the guidance produced by OFMDFM for distribution of departmental publications and consultation documents.

The purpose of the consultation document was to seek views on the policy underpinning the proposal for the introduction of a Public Service Pensions Bill in the Northern Ireland Assembly.

A collective total of 46 responses including 35 individual public service member responses, 4 organisational bodies responses, 6 individual trade union responses and a collective NIC-ICTU response on behalf of all trade unions was received by the Department of Finance and Personnel.

The Department's initial analysis of the collective responses is as follows:

- the vast majority of respondents submitted their views on aspects of the public service pension reforms that are outside the remit of this particular consultation and indicated their general disapproval and rejection to overall austerity reforms; and,
- individual employees' comments specific to the policy are endorsements to the Trade Union responses.

The response paper from NIC-ICTU is a composite of the submissions on the Public Service Pensions Bill by individual unions and endeavours to offer a flavour of the views being offered by the trade union on behalf of their members presently in these pension schemes. There are a number of issues raised by Trade Union Side and the main issues cited, although not exhaustive, are as follows:

- the overall need for reform of public service pension schemes;
- managing pension costs and the actuarial analysis;
- core provisions and the impact on public servants;
- the move to the Career Averaged Revalued Earnings (CARE) scheme;
- the linking of normal retirement age to state pension age and;
- the screening out of a full Equality Impact Assessment (EQIA).

DFP Officials are scheduled to attend a Departmental Committee meeting on 24 April regarding the response by individuals and groups to the consultation process. It is the Department's intention to respond to the issues raised in their Consultation Response document which will be made available on the Civil Service Pension Website at: [www.dfpni.gov.uk/civilservicepensions-ni](http://www.dfpni.gov.uk/civilservicepensions-ni). A further session to update the Committee on the Department's response is provisionally scheduled for 8 May.

Yours sincerely,

**Judith Finlay**

Departmental Assembly Liaison Officer

## Pensions Bill Response dated 17 May

**From the Office of the  
Minister for Finance & Personnel**



**Daithi McKay**  
Chairperson  
Committee for Finance and Personnel  
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Stormont  
BELFAST  
BT4 3XX

**DFP Private Office**  
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Your reference:

Our reference: COR/232/2013

17 May 2013

Dear Daithi

Thank you for your letter of 1 May 2013 regarding the DFP Committee's recommendations that DFP proposes to the Executive that the following steps are taken to further inform decisions:

- i. that the full scheme triennial actuarial assessments are revived and completed and the findings of these assessments are shared with all relevant parties, including the trade unions;
- ii. to take up the offer from the Government's Actuary Department to calculate the estimated savings from the proposed reforms in relation to each of the relevant local schemes; and,
- iii. that research is carried out to establish the wider macro-economic impact of the reforms for this region, including the potential reduction in labour market opportunities which may occur if people work longer.

### **Scheme Valuations**

The Public Service Pensions Bill in Northern Ireland will provide for a common framework for valuations of the public service pension schemes. As valuations are complex and highly technical procedures, and it would not be practicable to include the detailed specifications on the face of the Bill, this detail will be contained in published directions. These directions will apply to all of the public service pension schemes created by the Bill. Directions will specify how the data, methodology and assumptions used in a valuation will be set.

The initial level of the employer cost cap will be set with reference to the 2012 scheme valuations, with subsequent valuations being used to measure future costs against this cap. The scheme cost cap mechanism which the Bill will introduce will maintain costs between floor and ceiling limits in a way which takes account of factors such as changing trends in longevity and improved sustainability. The pension reforms are also designed to preclude future contribution increases outside of normal operation of the new cost cap mechanism.



Consideration will be given to the involvement of public service employers, scheme actuaries and trades unions, when considering the approach to valuations to ensure that directions reflect individual scheme circumstances and economic and demographic changes.

Consequently, I do not consider that there is a need to spend further time or resources in conducting the valuations which some schemes have pending or in process. It would be more prudent to concentrate on delivering the valuations required to implement the new schemes from 2015. Indeed, it is for this reason that I wrote to my Ministerial colleagues to advise them of this position. In response, the Education Minister agreed that work should begin to make the necessary legislative changes which would permit the Northern Ireland Teachers' Pension Scheme to move straight to completion of a 2012 valuation. I have not received any further responses from other Ministers with responsibility for a Northern Ireland Public Service Pension Scheme.

### **Government's Actuary Department (GAD)**

We need to be mindful that the rationale for commissioning GAD to undertake this piece of work was solely to demonstrate that there would be a **cost** for any delay beyond April 2015 in implementing the Executive decision taken on 22 March 2012.

As previously explained, the Health and Social Care Scheme in Northern Ireland was chosen by GAD for detailed analysis as it is the biggest public service pension scheme in Northern Ireland. This analysis demonstrated that, if we fail to make the deadline of April 2015, the savings which will be forgone for the Health and Social Care Scheme are estimated to be in the region of £100m per year. Although this is not direct cash saving, it is likely that HM Treasury will seek to use a similar type exercise and recoup this directly from the Northern Ireland Block allocation.

However, in response to your request, GAD has now confirmed that to undertake further similar exercises for the other Northern Ireland public service pension schemes would cost in the region of £20,000 - £30,000. I have therefore instructed my officials to commission GAD to undertake this analysis for each of those schemes. My officials will endeavour to provide this information to the Committee when it becomes available. It should be noted that this further estimate will be done on the assumption that all the schemes in Northern Ireland adhere exactly to the provisions in their counterpart scheme in GB. The Executive decided on 8 March 2012 to implement Pension Reform for the schemes in Northern Ireland in line with their equivalent schemes made under the Westminster Act. However, in the eventuality that a different approach to the overarching policy is adopted a more detailed analysis will be required. This will result in actuarial fees for each scheme potentially exceeding £100,000 and for all six schemes could the total cost could therefore exceed £600,000.

### **Wider macro-economic impact of the reforms**

I stated in the Assembly on 26 November 2012 that the purpose of the Bill is to implement a policy decision taken by the NI Executive. The Executive is cognisant of macro-economic issues associated with its policies, including the financial impacts for Departmental Budgets and public services which will be incurred if its agreed policy for pension reform is not implemented. Spending more on public service

pensions will effect a diversion of available funding from other areas. The NI Executive and Assembly will have further opportunity to consider and reflect on the macro-economic costs and social consequences that may be associated with the content and timetable for this Bill when it comes before them in the coming months.

There is no indication that there will be any reduction in labour market opportunities as a direct consequence of the pension reforms. The same number of employment opportunities will exist. However, during any adjustment period some of these may well be filled by people from different ages. It is acknowledged that some of these trends are already evident as our population is getting older and that public service employees can already choose to work longer as a general trend to remove the default retirement age.

Lord Hutton, who chaired the review of public service pension reform, reported that final salary pension arrangements in the public service are unsustainable and recommended their replacement with alternative models which share the cost of pension provision more equitably between public service employees and the tax payer whilst continuing to protect the accrued rights of current employees. Northern Ireland has to date maintained parity with Great Britain in the approach to public service pension provision. Lord Hutton's report recommended that this policy of parity should be maintained and that the key design features of the proposed new schemes should be part of a UK-wide policy framework that extends to each of the Devolved Administrations, including Northern Ireland. His report indicated that final salary schemes restrict labour market mobility, and that, at the macro-economic level, a more flexible labour market should increase efficiency across the economy as a whole.

To undertake a full macro-economic impact analysis would be a huge piece of work which would take a considerable amount of time and cost a substantial amount of money. There is a strong case for reform in line with the Hutton recommendations, as Devolved Administrations, which do not adhere consistently to the policy framework for all their public service schemes, will have to bear the cost of this hit on Block finances allocated from Central Government. Any such reduction in the Northern Ireland Block will have an automatic economic impact on the regional labour market.

I hope this updates you on the position regarding the issues raised in your letter.

Yours sincerely

**SAMMY WILSON MP MLA**





## COMMITTEE FOR FINANCE AND PERSONNEL

Mr Sammy Wilson MP MLA  
Minister of Finance and Personnel  
Craigantlet Buildings  
Stoney Road  
BELFAST  
BT4 3SX

1 May 2013

Dear *Sammy*

### Public Service Pensions Bill

At its meeting on 24 April 2013, the Committee received briefings from Trade Union representatives and Departmental officials on this proposed Bill.

Following deliberations, members agreed that the Committee would write to the Department to recommend that a number of measures are taken to more accurately assess the implications of the proposed pension reforms locally, including the cost (savings forgone) of any decisions not to implement the reforms at a scheme level and the wider socio-economic impact of raising the retirement age. In particular, the Committee recommends that DFP proposes to the Executive that the following steps are taken to further inform decisions:

- that the full scheme triennial actuarial assessments are revived and completed and the findings of these assessments are shared with all relevant parties, including the trade unions;
- to take up the offer from the Government Actuary's Department to calculate the estimated savings from the proposed reforms in relation to each of the relevant local schemes; and
- that research is carried out to establish the wider macro-economic impact of the reforms for this region, including the potential reduction in labour market opportunities which may occur if people work for longer.

The Committee recognises that a clear understanding of the full implications of the proposed reforms is all the more important given the size of the local public sector and the number of people that will be affected. It is anticipated that the recommended measures will help to establish a more solid evidence base upon which Ministerial decisions can be taken on the future arrangements for public sector pension schemes here.

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Yours sincerely

**Daithí McKay**  
**Chairperson**  
**Committee for Finance and Personnel**

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# DFP Response Document on the Public Services Pensions Bill Policy (2)

## Public Service Pensions Bill Outcome of Consultation and Proposals on the Way Forward

From: Judith Finlay  
To: Shane McAteer  
Date: 20 May 2013

### Summary

Business Area: Corporate HR  
Issue: Public Service Pensions Bill – Outcome of Consultation and Proposals on the Way Forward  
Restrictions: None  
Action Required: To note

### Background

1. The proposed Public Service Pensions Bill will give legislative effect to the Executive's decision of 8 March 2012 to introduce major changes to public service pension schemes. In particular the Executive agreed to:
  - i. commit to the policy for a new career average revalued earnings (CARE) scheme model with pension age linked to State Pension Age to be adopted for general use in the public service schemes; and
  - ii. to adopt this approach consistently for each of the different public sector pension schemes in line with their equivalent scheme in Great Britain and not to adopt different approaches for Northern Ireland.
2. The agreed policy is formulated on recommendations made by the Independent Public Service Pensions Commission for reform of public service pension schemes as part of its fundamental structural review of public service pension provision. The Commission reported that the public service pension structure in the United Kingdom has not responded flexibly to rising pension costs and increases in longevity in the past few decades and it is not tenable in the long-term.
3. The Department informed the Committee on 13 December 2012 that the Executive had declined to agree to the proposed legislative consent motion at its meeting on 22 November 2012. Accordingly, the Minister announced his intention to introduce an Assembly Bill to give effect to pension reform in Northern Ireland.
4. Two DFP Evidence Sessions on the Public Service Pensions Bill have taken place thus far. On 9 January 2013, Corporate HR officials provided information on the core provisions of the Bill, timescales and the financial implications of any delay in its implementation. Officials also provided information on the proposed consultation it would undertake. At a further Evidence Session on 24 April 2013, officials provided a further briefing on the initial findings of the consultation.
5. Supplementary information was requested and provided to the Committee on 9 May 2013. This included the full details of equality screening, all responses to the public consultation, an assessment of the implications of the agreed amendments to the Westminster Bill, detail of the legislative provisions which allow for the transfer of staff from one scheme to another,

and detail of DFP communication with other Departments in relation to the full scheme triennial assessments.

6. The Committee has requested that officials attend the meeting on 22 May 2013 to provide information on the outcome of the consultation on the Public Service Pensions Bill and proposals on the way forward.

### **Outcome of Consultation**

7. The Department launched the policy consultation document on 21 January 2013 with a closing date of 15 April 2013. A copy of the consultation document is attached at Annex A. The purpose of the consultation document was to seek views on the policy underpinning the proposal for the introduction of a Public Service Pensions Bill in the Northern Ireland Assembly. Views were invited on the relative merits of the core provisions in achieving the objectives for pension reform agreed by the Northern Ireland Assembly on 8 March 2012.
8. Civil Service Pensions co-ordinated the consultation on behalf of the Northern Ireland Public Service Pension Schemes. When the consultation document was published, the Department issued notification of the consultation to relevant Civil Service Groups in line with the guidance produced by OFMDFM for distribution of departmental publications and consultation documents. The other Public Service Pension Scheme officials confirmed their Departments utilised their communication resources to bring the consultation to the attention of their relevant groupings.
9. A collective total of 52 responses including 36 individual public service member responses and 7 organisation responses, 8 individual trade union responses and one collective NIC-ICTU response on behalf of all trade unions were received by the Department.
10. A copy of all the consultation responses was sent to the Committee on 9 May 2013.
11. The Department's analysis is as follows:

A collective total of 46 responses were received to the consultation by the close of the Consultation on 15 April and are broken down as follows:

|                           |    |
|---------------------------|----|
| Individual scheme members | 35 |
| Organisational bodies     | 4  |
| Trade Unions              | 6  |
| Collective Trade Unions   | 1  |

A total of 6 late responses were received following the closing date however the Department accepted these responses as best practice and consider accepting these responses supports the view that the Departments are dedicated to ensuring that as many views as possible are considered for future policy formulation. They are broken down as follows:

|                           |   |
|---------------------------|---|
| Individual scheme members | 1 |
| Organisational bodies     | 3 |
| Trade Unions              | 2 |

12. The Departmental response is attached at Annex B and will be published on the Civil Service Pensions website at: [www.dfpni.gov.uk/civilservicepensions-ni](http://www.dfpni.gov.uk/civilservicepensions-ni)

13. The Departmental analysis of the responses received is:
  - i. the vast majority of respondents submitted their views on aspects of the public service pension reforms that are outside the remit of this particular consultation and indicated their general disapproval and rejection to overall austerity reforms;
  - ii. some individual employees' comments specific to the policy are endorsements to Trade Union responses;
  - iii. the composite submission from NIC-ICTU on behalf of the individual unions raises a number of issues which are addressed in the response document; and
  - iv. overall the substance of the responses received was anticipated by the Department.
14. The main issues cited, although not exhaustive, raised by the Trade Union Side are as follows:
  - the overall need for reform of public service pension schemes;
  - managing pension costs and the actuarial analysis;
  - the core provisions and the impact on public servants;
  - the move to the Career Averaged Revalued Earnings (CARE) scheme;
  - the linking of normal retirement age to state pension age; and
  - the screening out of a full Equality Impact Assessment.
15. The Departmental response also sets out the key issues raised by respondents to the consultation and the response to these issues.

#### **Way Forward**

16. The Department has concluded that the case for change still stands. The costs of pensions are increasing as people live much longer than previous generations. These additional costs have generally been funded by other taxpayers, which is unsustainable. Although an increase in life expectancy is good news, the position where more and more years are being spent in retirement is simply not affordable. A long term solution is required that will last a generation and that will be fair to public service workers and fair to other taxpayers.
17. HM Treasury published the Coalition Government's preferred pension scheme design in November 2011 and following discussions with trades unions, scheme-specific alternatives/models based on the principles contained in the Coalition Government's preferred design were developed.
18. The Northern Ireland Executive has already agreed, on 8 March 2012 to adopt this approach to pension reform for the public service in Northern Ireland.
19. The Northern Ireland Public Service Pension Schemes have also given careful consideration to the issues raised in the consultation and have provided comments where relevant. They have noted that the introduction of the Public Service Pensions Bill in the Northern Ireland Assembly, as proposed in the consultation document published on 21 January 2013, should be implemented with the following core provisions:
  - a move to a Career Average Revaluated Earnings (CARE) scheme model of pension saving;
  - a direct link to equalise schemes' Normal Pension Ages with the State Pension Age (except for the police and fire and rescue services);
  - a Normal Pension Age of 60 (subject to regular review) for the police and fire and rescue services;
  - a final salary link for any final salary pension accrued prior to the date at which the new schemes will commence;

- a scheme cost cap with a default mechanism to maintain costs within set cost floor and ceiling limits;
  - transitional protection measures for scheme members who were within 10 years of their existing Normal Pension Age on 1 April 2012; and,
  - revised measures for scheme governance.
20. The Department of Finance and Personnel will now proceed with the introduction of the Public Service Pensions Bill in the Northern Ireland Assembly.
21. The response to the consultation will be issued to individuals and groups listed in the current OFMDFM guidance on the distribution of Departmental publications and consultation documents which includes representatives of the main political parties in the NI Assembly.
22. The response to the consultation will be issued to the main Northern Ireland public service trades unions. Civil Service Pensions will inform Northern Ireland Civil Service employers and employees of the response to the consultation.

## Annex A

Civil Service Pensions  
Department of Finance and  
Personnel  
Waterside House  
75 Duke Street  
Londonderry  
BT47 6FP

### Northern Ireland Public Service Pensions Reform

**Consultation on proposals to Reform Public Service Pensions from  
April 2015**

**21 January 2013**

## Purpose

The purpose of this consultation document is to seek views on the policy underpinning the proposal for the introduction of a Public Service Pensions Bill in the Northern Ireland Assembly. This bill will reform public service pension schemes in Northern Ireland in line with pension reforms currently planned in the United Kingdom, based on the recommendations of the Independent Public Service Pension Commission (IPSPC).

## Background

### Why are reforms needed?

People are living longer, meaning that public service pensions are being paid for much longer than was expected when schemes were designed. As a result the cost of providing current pensions benefits has been increasing, with the bulk of this extra cost falling to the taxpayer.<sup>1</sup> Although an increase in life expectancy is good news, the position where more and more years are being spent in retirement is simply not affordable. A long term solution is required that will last a generation and that will be fair to public service workers and fair to other taxpayers.

At budget 2010 the Conservative Liberal Democrat Coalition Government announced the establishment of an Independent Public Service Pension Commission (IPSPC) to undertake a fundamental structural review of public service pension provision. The Commission was tasked with making recommendations on pension arrangements that are sustainable and affordable in the long term, fair to both the public service workforce and the taxpayer and consistent with the fiscal challenges ahead, while protecting accrued rights which would form the basis of long-term structural reform of public service pension schemes in the United Kingdom. The Commission published its final recommendations on 10 March 2011 and in the same month the Coalition Government accepted the IPSPC recommendations as the basis for consultation with public service workers, trades unions and other representative bodies.

In November 2011, HM Treasury published *'Public Service Pensions: good pensions that last'* setting out the Government's preferred pension scheme design and, following discussions with trades unions, scheme-specific alternatives/models based on the principles contained in the Government's preferred design were developed.

### Managing Pension Costs

The Coalition Government has estimated that its reform programme will cut the cost of public service pensions by 40 per cent over the next fifty years, with net costs falling from 1.5 per cent of Gross domestic Product in United Kingdom (GDP) without reform, to 0.9 per cent with reform by 2061-62.<sup>2</sup>

The Department of Finance and Personnel has commissioned its own actuarial analysis to estimate the potential impact of the Government's programme for pension reform in terms of the proportional level of savings which the programme will require to be made by the Northern Ireland public service pension schemes.

The savings which will be forgone for the Health and Social Care Scheme in Northern Ireland if the core provisions for pension reform are not implemented are estimated to be in the region of £100m per year. This would be effective from 2015/16 which is when the Government expects these reforms to be implemented. Analysis for the Civil Service pension

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1 Recent HM Treasury figures show the cost of public service pensions paid out in the United Kingdom has risen by more than a third over the last ten years to £32 billion a year. ('Public Service Pensions: good pensions that last' [www.hmtreasury.gov.uk](http://www.hmtreasury.gov.uk))

2 The Office for Budget Responsibility (OBR)'s Fiscal Sustainability Report 2012 (published 12 July 2012)



scheme gives a figure of £60m a year. For the Northern Ireland Teachers Pension Scheme the estimate is £62m. For the Police Service pension scheme the estimated saving is £18m and for the Northern Ireland Fire and Rescue Service the estimate is £23m. The total figure therefore would exceed £262m per year.<sup>3</sup>

These figures are estimates however they indicate the extent of the potential financial impacts for funding for the Northern Ireland public service pension schemes if the pension reform policy is not applied.

Urgent action by the Department of Finance and Personnel is required to manage these costs and any consequential losses for Northern Ireland block funding. HM Treasury has confirmed to the Minister of Finance and Personnel that where the reforms are not implemented a commensurate reduction will be applied to Northern Ireland block funding.

## The Public Service Pensions Bill in Westminster

A Public Service Pensions Bill was introduced in the House of Commons on 13 September 2012 and is expected to achieve Royal Assent in May 2013. This Bill will establish a legislative framework for the introduction of new public service pension schemes. New schemes reflecting the core provisions of the Bill will be introduced from April 2015 for most schemes with the exception of local government schemes which will implement the reforms from 1 April 2014.

The core provisions which are contained in the Bill are:

- a move to a Career Average Revaluated Earnings (CARE) scheme model of pension saving;
- a direct link to equalise schemes' Normal Pension Ages with the State Pension Age (except for the police and fire and rescue services);
- a Normal Pension Age of 60 (subject to regular review) for the police and fire and rescue services;
- a final salary link for any final salary pension accrued prior to the date at which the new schemes will commence;
- a scheme cost cap with a default mechanism to maintain costs within set cost floor and ceiling limits;
- transitional protection measures for scheme members who were within 10 years of their existing Normal Pension Age on 1 April 2012; and,
- revised measures for scheme governance.

HM Treasury has confirmed that the policy intent is for the provisions in the Westminster Bill to apply to all public sector schemes, including bespoke schemes which make pension provision for employees of public bodies not captured by the main schemes, although in some cases this may be to a longer timescale.

### The Position in Northern Ireland

Responsibility for pension arrangements for public service employees in Northern Ireland is devolved. However, a longstanding convention of parity of provision in this area has meant that in effect, public service pension policy is developed centrally and the main provisions of Northern Ireland schemes are practically identical to the equivalent schemes in Great Britain. The IPSPC report recommended that this policy of parity should be maintained and that the key design features of the proposed new schemes should be part of a UK-wide policy

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3 Figures are based on analysis provided by the Government Actuary's Department of estimated savings in respect of pension rights earned after 2015, and based on a seven percent saving of the pensionable payroll per year specified in the OBR Fiscal Sustainability Report for 2012.

framework that extends to each of the Devolved Administrations, including Northern Ireland. While the Government expects the policy for reform to be implemented UK wide, it will be for the individual schemes within the Devolved Administrations to implement the policy and take forward legislation to implement these reforms at scheme level. Devolved administrations which do not adhere consistently to the policy framework for all their public service schemes will have to bear the cost of any exceptions from the block finances allocated from Central Government.

This is a cross cutting policy with policy and legislative responsibility for public service schemes in Northern Ireland resting with a number of Northern Ireland Assembly Ministers. Details are set out in the table overleaf.

| <b>Pension Scheme</b>                                                                   | <b>Minister</b>     | <b>Department</b>                                       |
|-----------------------------------------------------------------------------------------|---------------------|---------------------------------------------------------|
| Northern Ireland Teachers' Pension Scheme                                               | John O'Dowd MLA     | Department of Education                                 |
| Local Government Pension Scheme (Northern Ireland)                                      | Alex Attwood MLA    | Department of the Environment                           |
| Principal Civil Service Pension Scheme (Northern Ireland)                               | Sammy Wilson MP MLA | Department of Finance and Personnel                     |
| Health and Social Care Pension Scheme<br>Firefighters Pension Scheme (Northern Ireland) | Edwin Poots MLA     | Department of Health, Social Services and Public Safety |
| Police Service of Northern Ireland Pension Scheme                                       | David Ford MLA      | Department of Justice                                   |

Following the establishment of the Independent Public Service Pension Commission, the Department of Finance and Personnel hosted a visit to Northern Ireland by the Commission in September 2010. A number of bilateral meetings between representatives from Northern Ireland public service pension schemes, employers and trade unions and the Commission were held at which issues central to the reform of public service pensions which will be carried in the proposed Bill were considered.

Some Northern Ireland public service pension schemes have closed final salary schemes and may already provide either a CARE model of pension saving for new employees and/or introduced a higher pension age for new employees. The Local Government Pension Scheme (Northern Ireland) already operates a pension age of 65 for all staff. The Northern Ireland Civil Service introduced a CARE pension scheme, with a pension age of 65 (nuvos) for all new entrants from 30 July 2007. The Northern Ireland Teacher's Pension Scheme introduced a pension age of 65 for all new staff from 1 April 2007. The Health and Social Care Pension Scheme has a pension age of 65 for new staff employed on or after 1 April 2008. Both the new Police Service of Northern Ireland Pension Scheme and the Firefighters Pension Scheme (Northern Ireland) currently operate a normal pension age of 55.

However all of the Northern Ireland public service pension schemes currently operate a final salary pension arrangement and/or pension age below current state pension age for some or all of their existing staff.

On 8 March 2012 the Northern Ireland Executive agreed to:

- (i) Commit to the policy for a new career average revalued earnings (CARE) scheme model with pension age linked to State pension Age to be adopted for general use in the public service schemes; and,
- (ii) Adopt this approach consistently for each of the different public sector pension schemes in line with their equivalent scheme in Great Britain and not to adopt different approaches for Northern Ireland.

This policy will require all staff in final salary pensions to be moved to new CARE schemes for future service as soon as is practical. The Executive considered and decided against utilising a legislative consent motion that could allow provisions for the reform of Northern Ireland public service pension schemes to be accounted for in the Westminster Bill. Subsequently, on 26 November 2012, the Minister of Finance and Personnel, Sammy Wilson, announced his intention to introduce a Public Service Pensions Bill in the Assembly. The purpose of the Bill will be to implement the Executive decision made on 8 March 2012.

The proposed Bill will implement the policy for the reform of public service pensions made for the following classes of public service employees in Northern Ireland:

- civil servants;
- local government workers;
- health service workers;
- teachers;
- fire and rescue workers; and
- members of the police force.

The reforms are scheduled to take effect for each of the schemes from April 2015 with the exception of the scheme for local government workers where the reforms will be introduced in April 2014.

The Local Government Pension Scheme (Northern Ireland) is a 'funded' scheme which means that contributions from employees and employers are paid into a fund, which is then invested, and from which the cost of pension benefits is met. The other main public service schemes are unfunded which means employer and employee contributions paid to the sponsoring government department are not invested but netted off by the sponsoring government department which pays benefits to pensioner members as an expenditure.

Local Government schemes reached an agreed position with the Coalition Government that the programme for increasing member contribution rates which has applied for other public service schemes from April 2012 should not apply for those schemes but that local Government schemes would instead agree an alternative reform package to deliver the required level of savings from that would have been realised had contribution increases been applied. As part of the alternative package of reform the Northern Ireland Local Government Pension Scheme, it is intended that the main provisions for pension reform will be introduced in Northern Ireland from April 2014.

It should be noted that the reform proposals carried in the proposed Bill remain separate to the programme for increased member contribution rates for public service pension schemes in general.

As in the Westminster Bill, the Public Service Pensions Bill to be introduced in the Northern Ireland Assembly will be a framework Bill and so will not contain detail on individual scheme designs. These designs will be set out in the regulations and scheme rules for each scheme under their secondary legislation. This approach is: in line with previous pensions legislation; provides the flexibility needed to establish scheme designs appropriate for the different workforces; and ensures that schemes can be amended to reflect new regulatory requirements without primary legislation.

This consultation does not consider matters that vary between schemes but instead focuses on those common features which the Bill will contain that will broadly apply to all public service pension schemes. Consideration of scheme-specific impacts will be undertaken separately by each of the relevant Ministerial Departments which have legislative responsibility for the Northern Ireland public service schemes.

## Core Provisions

The core provisions of the proposed Bill are set out below.

### **A move to a Career Average Revalued Earnings (CARE) scheme model of pension saving.**

In a final salary scheme, a pension is typically calculated as a fraction of the final salary for each year of service. 'Final Salary' is generally calculated at the highest level of pay within the member's last few years of employment. In a career average scheme, a member builds up a slice of pension based on their salary in that year. At the end of the year the 'slice' is increased – typically either to reflect price or earnings increases. When the member finally leaves, their total pension is calculated by adding up the slices that they have built up.

In its final report, the IPSPC concluded that final salary pension schemes did not provide the "right design for future public service schemes" and that final salary schemes:

"unfairly benefit high flyers who can receive up to twice as much in pension payments per £100 of contributions. It exposes taxpayers to salary risk (the risk that higher than expected salary rises increase the cost of providing pensions), which should be borne by the scheme member who benefits from the salary rise. And final salary creates a barrier to employees moving from the public to private sector. These inherent problems of final salary schemes impact on fairness and sustainability and have led the Commission to conclude that an alternative model should be chosen for the future".<sup>4</sup>

The Commission's report concluded that CARE schemes can provide more equitable outcomes for lower and moderate earners, are fairer for the taxpayer and less costly for future employers to provide.

### **A direct link to equalise schemes' Normal Pension Ages with State Pension Age (except for the police and fire and rescue services.**

The Commission's final report also recommended, that for future accruals in the new CARE pension schemes, the normal scheme pension age for most public service employments (but not those for the uniformed services) should be linked to the State Pension age and that the link between the State Pension Age and Normal Pension Age should be regularly reviewed, to make sure it is still appropriate. The reference to the uniformed service related specifically to the Armed Forces, the Police and Firefighters. It was not just those in a uniform (such as Prison Officers, Immigration Officers etc, who are not excepted from the link to state pension age), nor those with a potentially physically demanding role (such as paramedics). The Commission concluded that:

"The introduction of the link to the State Pension Age, which will initially move Normal Pension Ages to 65, will move the proportion of adult life in retirement for public service pension scheme members back to about a third: roughly where it was in the 1980s. The current State Pension Age of 65 is already the Normal Pension Age for most new entrants to public service pension schemes. Moving to this for future accrual will more fairly distribute the benefits between scheme members. In the long term, the timetabled increases in State Pension Age should help to keep the proportion of adult life in retirement for members around this level, on current life expectancy projections".<sup>5</sup>

### **A Normal Pension Age of 60 (subject to regular review) for the police and fire and rescue services.**

The IPSPC recommended the Government consider a normal pension age of 60 for those fire and rescue workers who are firefighters, members of police forces, and also members of

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4 The recommendations of the Independent Public Service Pensions Commission are contained in its final report which was published on 10 March 2011. [www.hmtreasury.gov.uk/indreview\\_johnhutton\\_pensions.htm](http://www.hmtreasury.gov.uk/indreview_johnhutton_pensions.htm)

5 Independent Public Service Pensions Commission Final Report published on 10 March 2011. [www.hmtreasury.gov.uk/indreview\\_johnhutton\\_pensions.htm](http://www.hmtreasury.gov.uk/indreview_johnhutton_pensions.htm)

the armed forces whose current normal pension age is below that figure, subject to regular review. Therefore, the Bill excepts fire and rescue workers who are firefighters, members of police forces, and members of the armed forces from the requirement to link normal pension age to state pension age. It provides that their normal pension age should be 60. These groups historically have lower pension ages than other public servants in recognition of the unique characteristics of the work they do.

**A final salary link for any final salary pension accrued prior to the date at which the new schemes will commence.**

The IPSPC recommended that pension rights already accrued in the unreformed schemes up until the date of commencement of the new arrangements should be protected.

This means that the final salary link would be maintained for all years of reckonable service earned in the old final salary based schemes prior to its closing date, and up to the date the member is awarded all his or her benefits from that scheme. This could be before at or after the normal pension age associated with the scheme.

**A scheme cost cap with a default mechanism to maintain costs with set cost floor and ceiling limits**

The IPSPC recommended that the Coalition Government introduce a mechanism to ensure that public service pensions remain affordable and sustainable in the long term. It suggested a mechanism be introduced to act as a safety valve should costs within the new scheme increase due to factors not taken account of in the new scheme design. The Coalition government will therefore introduce an employer cost cap to cover any unforeseen events or trends that lead to significantly increased scheme costs. The policy to be reflected in a framework Bill will therefore introduce a legal requirement for scheme regulations to set an employer cost cap.

**Transitional protection measures for scheme members who were within 10 years of their existing Normal Pension Age on 1 April 2012.**

Transitional protection measures will apply for scheme members who are within 10 years of their existing Normal Pension Age on 1 April 2012. These groups would remain in the existing schemes (except for the local government scheme, where transitional protection is to be provided by means of an underpin). In most schemes, those within a further 3-4 years of normal pension age would have an option for a delayed transition to the new scheme; however the transitional arrangements for each scheme vary within the parameters that were set centrally by Government.

**Revised measures for scheme governance**

The IPSPC identified a great variety of governance arrangements in the public service schemes. They flagged that the position contrasts with that of the trust based schemes in the private and public sector, which are required to have pension boards that are responsible for the operations of the schemes. The Pension regulator in turn plays an active role in overseeing the operation of trust based schemes and ensuring their compliance with pension's legislation.

The Commission recognised that there are valid reasons for the different governance models, but considered that lessons can be learned from the trustee model. They recommended that every public service pension scheme (and individual Local Government Pension Scheme fund) should have a properly constituted, trained and competent pension board, with member nominees, responsible for meeting good standards of governance, including effective administration. The Commission also recommended that a framework should be established to ensure independent oversight of governance, administration and data transparency of the public service pension schemes.

The Coalition Government accepted these recommendations. The intention is that every public service pension scheme with two members or more will be required to establish a pension board to ensure that the schemes are managed and administered effectively and efficiently. The Pension regulator will be given a more active role in defining and regulating good standards of governance and administration in the public service pension schemes. Where the Pensions Regulator's existing powers relating to the administration and governance of pensions do not currently apply to the public schemes, they will be given equivalent powers.

## Equality Screening

The Department of Finance and Personnel is in the process of conducting an equality screening exercise to determine any potential impact on Section 75 groups and any subsequent equality impact assessments required. To enable a complete equality screening exercise Civil Service Pensions is required to gather collective data covering all the schemes which they previously did not retain and as this exercise is still ongoing a further notification will be issued when the screening document is completed and available.

Members of public service pension schemes in Northern Ireland will continue to receive a high quality pension with a guaranteed payment in retirement that is protected against inflation regardless of gender, race, age, disability, persons with dependents and persons without, political opinion, religion or belief, sexual orientation or marital/civil partnership status.

## Civil Service Pensions invites your views on:

The relative merits of the core provisions in achieving the objectives for pension reform agreed by the Northern Ireland Executive on 8 March 2012.

## What next?

Civil Service Pensions intends to co-ordinate a central formal consultation with public service trade unions on the proposed pension reforms and will accept responses to this consultation exercise until noon on the 15 April 2013.

Civil Service Pensions will then publish its response, which will give final details of the framework for pension reform to be adopted across all public service pensions schemes.

Responses should be emailed to [pensionspolicydsp@dfpni.gov.uk](mailto:pensionspolicydsp@dfpni.gov.uk) or posted to:

Consultation on Proposals for Public Service Pensions Reform  
Civil Service Pensions  
Department of Finance and Personnel  
Waterside House  
75 Duke Street  
Londonderry  
BT47 6FP

## Confidentiality

Information provided in response to this discussion document, including personal information, may be published or disclosed in accordance with the access to information regimes. These are primarily the Freedom of Information Act 2000 the Data Protection Act 1998 and the Environmental Information Regulations 2004. If you want the information that you provide to be treated as confidential, please be aware that, under the Freedom of Information Act, there is a statutory Code of Practice with which public authorities must comply and which deals with, among other things, obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances.

## Annex B

Attached Separately





## Northern Ireland Public Service Pensions Reform

### **Consultation on proposals to Reform Public Service Pensions from April 2015**

### **Department of Finance and Personnel response to consultation**

**20 May 2013**

## Contents

1. Introduction
2. Background
3. Consultation Process
4. Summary of Responses
5. Conclusion and Next Steps

# 1. Introduction

- 1.1. On 26 November 2012, the Minister of Finance and Personnel, Mr Wilson, announced his intention to introduce a Public Service Pensions Bill in the Assembly. The purpose of the Bill will be to implement the principles for pension reform agreed by the Executive on 8 March 2012 to:
  - commit to the policy for a new career average revalued earnings (CARE) scheme model with pension age linked to State pension Age to be adopted for general use in the public service schemes; and,
  - adopt this approach consistently for each of the different public sector pension schemes in line with their equivalent scheme in Great Britain and not to adopt different approaches for Northern Ireland.
- 1.2. The consultation sought views on the policy underpinning the proposed Public Service Pensions Bill to be introduced in the Assembly.
- 1.3. The consultation ended on 15 April 2013. The Department of Finance and Personnel received 46 responses within the deadline, and an additional 6 late responses. These responses came from a range of organisations and individuals including the public service pension schemes in Northern Ireland, Trade Unions, and public servants.
- 1.4. This document presents a summary of the Department of Finance and Personnel's response to the consultation, and conclusions. Other Public Service Pension Schemes have contributed to this response document in relation to comments specific to their scheme.
- 1.5. This document is available on the Department of Finance and Personnel website under 'Latest News'.

## 2. Background

- 2.1. The consultation document<sup>1</sup> provided the background and rationale to the Coalition Government's programme for public service pension reform announced in the 2011 Budget. These were based on the recommendations contained in the final report of the Independent Public Service Pension Commission (IPSPC) which was published in March 2011. The consultation document highlighted the need for reforms and the proposed actions required to adapt public service pension arrangements to emerging trends for increased life expectancy, to manage rising public service pension costs, and to establish future arrangements which are both fair for all public service workers and affordable for the taxpayer.
- 2.2. A Bill introduced in Westminster, which became the "Public Service Pensions Act 2013" on 25 April 2013 established the legislative framework for the introduction of new public service pension schemes in GB based on HM Treasury requirements. New schemes reflecting the core provisions of the Act will be introduced from April 2015 for most schemes. An exception to this is local government schemes which will implement the reforms from 1 April 2014. The IPSPC report recommended that the longstanding convention of parity of provision for pension arrangements for public service employees in Northern Ireland should be maintained and that the key design features of the proposed new schemes should be part of a UK-wide policy framework that extends to each of the devolved administrations including Northern Ireland.
- 2.3. HM Treasury confirmed that the policy intent was for the provisions in the Westminster Bill to apply to all public sector schemes. HM Treasury have also made clear that if the pension reform programme is not implemented to required timescales set out in the Westminster Public Service Pensions Act, a reduction in funding for the Northern Ireland block allocation will be imposed.
- 2.4. The Northern Ireland Executive considered on 8 March 2012 what approach should be taken to these reforms in Northern Ireland. The Executive decided to:
  - commit to the policy for a new career average revalued earnings (CARE) scheme model with pension age linked to State pension Age to be adopted for general use in the public service schemes; and,
  - adopt this approach consistently for each of the different public sector pension schemes in line with their equivalent scheme in Great Britain and not to adopt different approaches for Northern Ireland.
- 2.5. The Public Service Pensions Bill to be introduced in the Northern Ireland Assembly will be a framework Bill and therefore will not contain detail on individual scheme designs. These designs will be set out in the regulations and scheme rules for each scheme under their secondary legislation and this consultation does not consider matters that vary between schemes as scheme-specific impacts will be undertaken separately by each of the relevant Ministerial Departments which have legislative responsibility for the Northern Ireland public service schemes.

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<sup>1</sup> [http://www.dfpni.gov.uk/civilservicepensions-ni/policy\\_consultation\\_document-2.pdf](http://www.dfpni.gov.uk/civilservicepensions-ni/policy_consultation_document-2.pdf)

### 3. Consultation Process

3.1. Civil Service Pensions in the Department of Finance and Personnel coordinated the consultation on behalf of the Northern Ireland Public Service Pension Schemes. When the consultation document was published, the Department issued notification of the consultation to relevant Civil Service groups in line with the guidance produced by OFMDFM for distribution of departmental publications and consultation documents. The other public service pension scheme officials confirmed their Departments utilised their communication resources to bring the consultation to the attention of their relevant groupings.

3.2. Civil Service Pensions established a working group to provide an arena for engagement between Management Side of all public service pension schemes and a composite representation of Trades Union Sides for the purpose of information sharing and formal consultation on matters relating to the introduction of the Public Service Pensions Bill to the Northern Ireland Assembly. The group facilitates collective consultation with trades unions representing the public service workforce with regard to this consultation document and the Northern Ireland Committee of the Irish Congress of Trade Unions (NIC-ICTU) agreed to provide a collective trade union side response to this consultation.

3.3. A collective total of 46 responses were received to the consultation by the close of the Consultation on 15 April and are broken down as follows:

|                           |    |
|---------------------------|----|
| Individual scheme members | 35 |
| Organisational bodies     | 4  |
| Trade Unions              | 6  |
| Collective Trade Unions   | 1  |

3.4. A total of 6 late responses were received following the closing date. These responses were accepted as this follows best practice and also ensures that as many views as possible are considered for future policy formulation. These late responses are broken down as follows:

|                           |   |
|---------------------------|---|
| Individual scheme members | 1 |
| Organisational bodies     | 3 |
| Trade Unions              | 2 |

3.5. Some respondents offered comments on aspects of public service pension reform which were outside the scope of this consultation exercise. These comments were not considered as part of this consultation. In the next section, the Department of Finance and Personnel offers a summary of the responses submitted to the particular consultation question and the corresponding Departmental position. Where responses have made reference to a particular scheme, the relevant Departmental Officials for that scheme have been updated. This DFP response is collated taking account of advice received from officials representing other public service pension schemes on scheme specific issues within their areas of expertise.

## 4. Summary of Responses

### General

- 4.1. The vast majority of individual respondents submitted their views indicating their general disapproval and rejection of the overall policy for pension reforms and overall Coalition Government austerity measures. A few respondents offered support for the proposals as set out in the consultation and others offered support for certain aspects of the policy. Several individual comments endorse their TUS' stance which is addressed later in this summary of responses.
- 4.2. NIC-ICTU has stated that its response is a composite of the submissions on the Public Service Pensions Bill both by unions affiliated and non-affiliated to NIC-ICTU and endeavours to offer a flavour of the views being offered by the trade union on behalf of their members presently in these pension schemes. Therefore, the Department of Finance and Personnel's response in consultation with the other Departments to the issues raised by TUS is based on the structure of the NIC-ICTU response to the consultation.
- 4.3. However, comments from individual Trade Unions specific to their membership, which is not referred to in the NIC-ICTU response, have been addressed separately within the document.

### Individual Consultation Responses

#### General Comments in support of the changes

- 4.4. Specific individual responses submitting views on the policy underpinning the proposal for the introduction of the Public Service Pensions Bill in to the Assembly have been noted and included the following comments:

One respondent expressed agreement with the principle to move to career average schemes.

*"I am generally content with the concept of a career average scheme however I do have difficulty with the substantial increase in years to be served to reach pension age."*

Another respondent agreed in principle with an increased pension age in the Civil Service scheme.

*"I agree with the change to 65 years for all civil service employees."*

#### Departmental response

- 4.5. These comments have been noted.

#### Protected Pension Age

- 4.6. Several respondents expressed concern that Prison Officers, paramedics and ambulance workers are not included in the uniformed services category for protected pension ages.

*"Currently I have had to restrain prisoners who are in their twenties. In another 20-25 years, will I still be expected to restrain and control prisoners of that age when I am mid to late 60's?"*

*"Why as member of the Northern Ireland Prison Service am I being excluded for exemption? We are a uniformed service, we hold in prison those who have committed crimes, many have mental health problems, drug or alcohol problems. We are open to assault on a daily basis, we are open to accusations of all natures and yet we are refused the recognition we deserve."*

*I notice that in the consultation document it refers to paramedics who have a physically demanding role being exempt from an early retirement age of 60 as per the Police and Fire Service. There is clear evidence to show that a lot of ambulance workers have to currently retire on ill health grounds before 65. To expect them to retire at the state pension age in the future will be impossible to achieve. This was an issue that was accepted by the Government when they offered to set up a working group to look at this issue as part of pension reforms. I would request that this issue is looked at as part of the pension reforms in Northern Ireland and that a working group is set up to look at this."*

#### **Departmental Response**

- 4.7. The reference to the uniformed service in the IPSPC report related specifically to the Armed Forces, the Police and Firefighters. The report did not recommend any concession from the central recommendation to link normal scheme pension age to state pension age for any other public service employments outside of the categories for Police Officers, Firefighters and the Armed Forces. Therefore, the proposed reforms are in keeping with the recommendations contained in the IPSPC report.

#### **Issues about existing members**

- 4.8. Several respondents expressed the view that the proposed reforms should only apply to new entrants and that the proposed reforms are a breach of their current terms and conditions of service.

*"The decent thing to do is to change the pension scheme for new entrants. They can then make an informed decision to join or not."*

*"By all means, revise the terms for new recruits to the civil service, they have the choice whether or not sign up to them. But to "move the goalposts" for those of us who are in existing schemes is wrong."*

*"When I joined the civil service I signed a contract about my pension, now you have changed my pension without my consent, this breaks an agreement between myself and you (my employer), surely this is against the law?"*

*"I object to the proposed changes. One of the reasons I joined the Civil Service was the pension scheme. To force changes to this scheme without the consent of people who were employed under these conditions is immoral."*

#### **Departmental Response**

- 4.9. The IPSPC recommended that schemes must honour in full the pension promises that have been accrued by scheme members: their accrued rights. Therefore the final salary link for past service will be maintained for current members. Furthermore, the salary of reference for calculating pension benefits will be the final salary at the date of leaving and not the salary in payment immediately prior to the introduction of the new schemes.

#### **Transitional Arrangements**

- 4.10. One respondent expressed concerns about the proposals for transitional arrangements for some scheme members.

*"While there are special measures for scheme members within 10 years of retirement the next groups 10-15 yrs and 15-20 yrs from retirement also need to be considered. All of these scheme members are in the latter half of their career and hence limited in what financial and lifestyle changes they can now plan for. The situation is compounded by making the start of the 10 year period April 2012, three years before the actual changes and hence excluding a large number of affected members."*

**Departmental Response**

- 4.11. The purpose of the transitional arrangements is to provide protection for those close to retirement. Scheme regulations made under the Bill may provide that members who, on 1 April 2012, have 10 years or less to their current Normal Pension Age will see no change to when they can retire, or any reduction in the amount of pension they receive at their Normal Pension Age. Such staff would remain in their existing scheme up to and including the point at which they draw their pension..
- 4.12. Members of schemes, who are within 3.5 to 4 years (depending on their public service pension scheme) outside this protected group, may be eligible for an additional degree of protection, in the form of further accrual in their existing scheme. This protection will be tapered in a linear fashion depending on their age on 1 April 2012. In some of the Northern Ireland public service pension schemes the staff in this category may be offered the option, before April 2015, to forego this transitional protection and move straight into the new scheme from April 2015.
- 4.13. Transitional measures contained in the Bill provide protections which will mitigate immediate impacts of increased scheme pension ages for current members closest to retirement. This group will effectively have the least amount of time to adjust to the changes. As only older members will benefit from transitional protection the fact that they may have accrued more benefits with a link to final salary and protected pension age means that this group may receive higher pensions than members of a younger age. However this potential imbalance is mitigated by the fact that younger and future members will have more opportunity to benefit from increases in life expectancy in general.

## Organisational Consultation Responses

### Northern Ireland Local Government Officers' Superannuation Committee (NILGOSC)

- 4.14. The Northern Ireland Local Government Officers' Superannuation Committee has provided several responses in support of the changes to pension provision which have been noted and the Departments have responded below to specific comments/issues raised.

**Link of Normal Pension Age with State Pension Age**

- 4.15. Comment received:

*"The Local Government Pension Scheme (Northern Ireland) [LGPS (NI)] already has a normal retirement age of 65. From an Administrators point of view this change adds new complexity for our members as it appears that members will be eligible for 2 pensions, the first payable at age 65 based on service accrued up until 31 March 2014, and the second payable at the new Retirement Date based on service accrued from 1 April 2014"*

**Departmental Response**

- 4.16. The Department acknowledges that the LGPS(NI) has always had a normal pension age of 65. The majority of Northern Ireland public service pension schemes have however, introduced arrangements which include a normal retirement age of 65 for more recent entrants. The introduction of linking normal pension age to state pension age will indeed mean that members will be eligible for 2 pensions and the increase of the current state pension age from 65 to 68 for both men and women will require arrangements to be implemented for the administration of these changes.

**Final Salary Link for any Final Salary Pension Accrued Transitional Protection for members within 10 years of retirement**

- 4.17. Comments are set out below:

*“There is an acceptance that the final salary link will remain for service accrued up until the Scheme changes and the draft legislation for the LGPS in England & Wales includes this feature. The Trade Unions and Employers involved in the Northern Ireland negotiations have accepted this as a feature of the new Scheme.*

*As a Scheme Administrator we did not expect to see this feature recommended by the IPSPC as it makes the administration of a pension scheme more complex”*

*“The Trade Unions and Employers involved in the Northern Ireland negotiations have already accepted this as a feature of the new Scheme. For an administration viewpoint this adds another extra complexity to the management of the Scheme and the service provided to the Scheme members”*

**Departmental Response**

- 4.18. Administrative complexities noted.

**Revised measures for Scheme Governance**

- 4.19. Comment received:

*“NILGOSC already has a Board responsible for the operation of the Scheme. The Board is properly constituted, trained and competent with member nominees. The Pensions Regulator already has an oversight of some issues and therefore we are content that the role is expanded as long as the Regulator takes account of the size and the secure funding nature of the public sector schemes and therefore does not necessarily apply the same requirements for small trust based scheme to schemes like ourselves”*

**Departmental Response**

- 4.20. The Department recognises that as a funded scheme managed by NILGOSC the LGPS(NI) is subject to constraints and controls operated by a pension board . The Bill will provide for NILGOSC to perform the role of the pension board.

**The Coalition Government's Pension Policy**

- 4.21. Comments received:

*“The IPSPC review was designed to make the public sector pension schemes sustainable and affordable. The high-level matters outlined in your consultation document facilitate that. The detailed agreement reached between the Trade Unions and Employers in England & Wales for the Local Government Pension Scheme is estimated to save Employers approximately 2% of salary costs which is to be welcomed. However Employers Rates will still remain high. The Government has recently published its White Paper on the Single State Pension which recommended the end of Contracting-Out from 2016. Employers currently receive a rebate on their National Insurance costs of approximately 3.4%. The end of this rebate will therefore increase Public Sector Employers costs by up to 3.4%.*

*On the one hand the Governments policy of public sector scheme reform is estimated to save Public Sector Employer's costs but on the other the changes to the National Insurance regime will cost those employers significantly more. That change will also increase the costs for employees”*



**Departmental Response**

- 4.22. One of the core provisions contained in the Public Service Pensions Bill is a scheme cost cap with a default mechanism to maintain employer pension costs within set cost floor and ceiling limits.
- 4.23. The National Insurance Contributions, including reductions in contributions and national insurance rebates, are an excepted matter under paragraph 10 of Schedule 2 to the Northern Ireland Act 1998 and are therefore outside the competency of the NI Assembly.

**Northern Ireland Local Government Association (NILGA)****General Comments**

- 4.24. A number of comments are set out below:

General comment:

*"NILGA wishes to see the retention of quality pension provision for our workforce. Quality pensions are a key aspect of our employment offer which is valued by employers and employees alike. At the same time, such provision must be affordable to taxpayers and ratepayers and placed within a framework that ensures that this remains the case".*

Career Average Revalued Earnings (CARE) scheme model of pension saving:

*"NILGA supports the principle of CARE schemes as the future model for public sector schemes. We do so as we believe that they represent a means of ensuring that good quality and affordable pension provision can be maintained into the future and that they provide for a more stable means of funding future provision".*

A direct link to equalise schemes' Normal Pension Ages with State Pension Age:

*"NILGA supports the proposal to link occupational pension scheme age and state pension age. Increasing longevity is a primary source of increasing pension costs and represents other economic challenges in ensuring that as a society we can maintain a balance between working life and life in retirement".*

Retention of final salary link for accrued benefits:

*"NILGA supports the protection of accrued benefits with the final salary linkage. We believe it would be iniquitous to put at risk and generate confusion around pension scheme member's future outcome, often built up over decades".*

Scheme Cost Cap:

*"The development of a scheme cost cap with supporting mechanisms to ensure that pension provision remains affordable is something that we would support. Such mechanisms will give confidence to employers around the future costs and also provide greater certainty to scheme members".*

Transitional protection measures within 10 years of Normal Pension Age:

*"Any change to pension provision carries the inherent risk of impacting in a disproportionately adverse way on those who are in the years immediately prior to retirement. NILGA supports proposals to ensure scheme members approaching retirement have arrangements for protection".*

**Departmental Response**

- 4.25. The Northern Ireland Local Government Association has provided responses generally in support of the changes to pension provision and their comments have been noted.

## Police Federation For Northern Ireland

- 4.26. A number of comments were received:

*"The Police Federation for Northern Ireland is content to address our concerns within the Police Negotiating Board (P.N.B.) Pensions Group as has been the case for a number of years.*

*I would highlight one issue which we wish to bring to your attention which is the opt out of the travelling to and from work for the purposes of injury in the execution of duty ill-health retirement. This issue is to be discussed and agreed with the constituent parts of P.N.B. from N.I.*

*Any other issues will be dealt with via the Working Group within P.N.B. at a National level".*

### Departmental Response

- 4.27. The Department has noted that the Police Federation for Northern Ireland will address their concerns via the Working Group within the Police Negotiating Board (P.N.B.) Pensions Group at a National Level under agreed procedures.

## Collective Response from the Northern Ireland Committee of the Irish Congress of Trade Unions (NIC-ICTU) on Behalf of Northern Ireland Trades Unions

- 4.28. The Department's response to the issues raised by TUS is presented based on the structure of the NIC-ICTU submission to the consultation received on 15 April 2013.

### Purpose

- 4.29. Comment received:

*"TUS does not accept that it is the role of the NI Executive and in particular the NI Assembly to just replicate in full the Westminster Bill. Public Service Pensions are a devolved matter and there is a need to give full and proper assessment to the issues raised in this response and by the NIC ICTU Trade Union Side both in its engagement with the Assembly DFP Committee and in the meetings with DFP/Sponsoring Departments' Officials".*

### Departmental Response

- 4.30. Policy for public service pensions is within the responsibility of Northern Ireland Ministers and the Assembly. For pensions, in the public sector, there is a general convention that policy broadly mirrors that which is adopted in Great Britain. The normal approach for the Northern Ireland Departments with responsibility for public service pension schemes has been to implement changes in pension policy as a consequence of decisions taken centrally rather than develop or formulate that policy directly.
- 4.31. This approach was endorsed by the Independent Public Service Pension Commission (IPSPC) in its final report published on 10 March 2011:

*"Although pensions policy, including public service pensions policy, is set at a national level, a number of the public service pension schemes are the responsibility of the Devolved Administrations rather than the UK Government. There has been scope for some variations in terms to meet local circumstances, but the resulting pension schemes have essentially been the same as those established by the UK Government. That has, for example, helped to prevent pension terms becoming an obstacle to transfers of staff and skills within a sector of the public service. It seems reasonable to continue with this approach.*

*The key design features should be part of a UK-wide policy framework that extends to Scotland, Wales and Northern Ireland, with limited adaptations of other features to meet local circumstance” (Independent Public Service Pensions Commission: Final Report – 10 March 2011 p113).*

- 4.32. This approach to public service pension policy also ensures uniformity in the reach of initiatives which are designed to facilitate permissive options for longer working lifetimes and deferral of retirement; create better opportunities for older workers; support the creation of conditions for an improved balance between life in work and retirement, and to help people save more for their retirement. These are objectives identified in the Europe 2020 initiative for design and modelling of pension reforms, which is a part of the European Union's growth strategy from 2012 to 2020.
- 4.33. The proposal for pension reform maintains an established approach and is in line with Executive decisions taken for policy, including the decision taken on 8 March 2012 that policy for pension reform should be implemented in the devolved schemes consistently and in line with the changes for the equivalent schemes in Great Britain. The announcement by the Finance Minister on 26 November 2012 of an Assembly Public Service Pensions Bill to implement the policy preserves the devolved administration's authority for full and proper assessment of Executive policies as part of the normal Assembly debate and Committee scrutiny stages during the legislative passage of an Executive Bill.

#### **Background: Why are reforms needed?**

- 4.34. Comments received:

*“In 2005 public service unions entered in to negotiations with employers on a scheme-by-scheme basis and agreed certain outcomes for the future of public service pension schemes. In many cases the change either had still to be introduced and/or agreement reached on measures such as “cap and collar“. The current Westminster Government reneged on the outcome of those negotiations as soon as it was elected in 2010. TUS, whilst unhappy with aspects of the 2005 changes believes that they provided the basis for fair and sustainable public service pension reform.*

*It is TUS's view that the totality of the changes are not only an attack on public servants but will also seriously damage scheme sustainability. The implications include likely further additional contribution increases, further increases to normal retirement age and yet more diminution of scheme benefits. This will result in greater dependence upon welfare benefits by retired public servants and exacerbate pensioner poverty.*

*Reference is made to the work of the “Independent Public Service Pensions Commission (IPSPC), otherwise known as the Hutton Report. TUS disputes the ‘independence; of the IPSPC and would also point out that the Westminster Government interceded on the work of the Commission via the unilateral decision to change indexation to CPI from RPI. The Government also determined at interim report stage to apply the average 3.2% additional contributions, again without any negotiation or consultation”.*

#### **Departmental Response**

- 4.35. Previous reforms have helped to strike a better balance between employees and taxpayers in the distribution of pension costs but have not addressed all of the underlying pressures of cost in providing public service pensions. The interim report of the IPSPC found that;

*“cap and share cannot take account of the increases in cost of pensions over recent decades because people have been living longer. Also, untested, complex cap and share arrangements cannot of themselves, address the underlying issue of structural reforms, nor significantly reduce current costs to taxpayers” (Independent Public Service Pensions Commission: Interim Report - 7 October 2010 p39).*

- 4.36. A similar view was expressed by Lord Turner, the former chair of the previous Pensions Commission which during the period 2002- 2006 undertook an extensive review and report into UK pension provisions. On the reforms which resulted from the 2005 consultations Lord Turner concluded:

*“It is essential, however, that the total burden on future taxpayers is seen as reasonable, relative to other demands on tax revenues, that the retirement age terms of the pensions are seen as fair, relative to those facing the rest of society, and that the arrangements are internally fair between different employees within the public sector. On each of those three criteria—cost, fairness relative to the private sector and fairness within the public sector—the deal that the Government reached with the unions in 2005 is inadequate and will need to be revisited at some time. It will be best revisited if there is transparency about the facts”.* (Lord Turner HL Deb, 11 June 2007, c1559).

- 4.37. The Scheme cost cap mechanism which the bill will introduce will maintain costs between floor and ceiling limits in a way which takes account of factors such as changing trends in longevity and improved sustainability. The cost cap floor will also provide for improved benefits for members if pension costs reduce, whereas the cap and share mechanism addressed only increasing expenditure.
- 4.38. The pension reforms which will be set out in the Bill are designed to ensure future scheme sustainability and preclude future contribution increases outside of normal operation of the new cost cap mechanism. HM Treasury has given a commitment that these reforms will rule out the need for further changes to the public service pension structure for at least the next 25 years. (Public Service Pensions: good pensions that last November 2011).
- 4.39. The Coalition Government explained its rationale for adopting the CPI method of revaluation and the policy to progressively increase member contribution rates between April 2012 and April 2014 as measures to manage increased costs for pension provision both in the short term and for the future. The policy for increased employee contribution rates for the main unfunded public service schemes was endorsed and agreed by the Executive on 22 September 2011 and each of the Sponsoring Departments undertook the requisite steps for statutory consultation with TUS prior implementing the increases. The legislation which governs the annual uprating of public service pensions in Northern Ireland specifies that the level of annual increase applied is equal to the percentage specified by the Department for Social Development for the increase of additional state pension in the annual direction made in accordance with section 132 of the Social Security Administration (Northern Ireland) Act 1992. The Department for Social Development only has power to increase benefit rates in line with increases prescribed by the Secretary of State for Work and Pensions in relation to Great Britain.
- 4.40. The Coalition Government announced in its Budget statement on 22 June 2010 that from April 2011 increases in pensions would be based on the annual rise in the CPI and the neither the Department for Social Development or the Department of Finance and Personnel have any additional scope to vary this approach in their uprating legislation.

#### **Managing Pension Costs**

- 4.41. Comments received:

*“Reference is made to the potential losses to the NI block funding. There is no proper basis or assessment of how the Finance Minister arrived at the quoted £262m figure. What has been made clear by the Finance Minister to his fellow Ministers is that each Stormont Department will have to fund the ‘cost’ of not implementing the Reforms from their Departmental budgets. This devolution of responsibility will place ministers under pressure, not alone in respect of this Primary Legislation, but in considering the Secondary Legislation and Regulations for each Scheme.*

*This section at least brings some honesty to the basis for the proposed changes. It identifies that by circa 2060 the GDP costs of public service pensions will fall from 1.5% to 0.9%. This is clearly linked to the proposals for the changes to the state pension with its aim being by 2060 to reduce GDP expenditure on state pensions from 8.5% to 8.1.*

*Reference is made to DFP's own "actuarial analysis". If this is the document provided to the NIC ICTU Trade Union Side then TUS disputes the accuracy of the figures. The work done by GAD was predicated on the NI HSC Scheme extrapolated across the rest of the NI Public Service Schemes on a 7% figure. The HSC costing is disputed as it applied a baseline cost of 26% vis-à-vis the published cost figure of 21%. No account was taken of scheme variables across the other schemes such as membership uptake pension values, age profile, the impact of autoenrolment to list just a few.*

*The unions have pressed for and to date been denied (with the exception of NILGOSC) full scheme triennial actuarial assessments. Costings that can be relied upon can only be so when those assessments are made available.*

*The costs to the NI Block and the cost for social security have not been properly assessed. In particular the wider macro economic impact of increasing the normal retirement age with the resultant reduction in labour market opportunities for the unemployed, school/university leavers and those seeking to return to the labour market has not been researched".*

#### **Departmental Response**

- 4.42. The Minister of Finance and Personnel has made clear that Departmental estimates of the cost of a delay or failure to introduce the required reforms are based on a calculation method provided by the Government Actuary's Department. The Government Actuary's Department (GAD) provided data indicating, in broad terms, the financial impacts of the Public Service Pensions Bill provisions and in particular the quantitative analysis considering the savings in respect of pension rights earned after 2015. GAD adopted a simplified methodology to calculate the contribution rates for the Health and Social Care Pension Scheme based on percentage assumptions of membership retiring at normal pension age and leaving the scheme prior to normal pension age. DFP officials used this methodology to estimate costs for the other main Northern Ireland Public Service Pensions. The total costs were estimated to be in excess of £260m. A breakdown of the total cost across schemes is contained in the original consultation document.
- 4.43. The Minister of Finance and Personnel has also made clear that in the absence of actual figures provided from HM Treasury, these estimates are intended to give an illustration of the scale of the financial penalty which would be imposed as a consequence of a delay or failure to introduce the required reforms.
- 4.44. The Finance and Personnel Committee has recommended that DFP instruct GAD to undertake further work on estimated costs in respect of each of the main Northern Ireland unfunded public service pension schemes. TUS has expressed concerns on the use of the calculation method used for the Health and Social Care Scheme to estimate costs for the other main schemes. The Department of Finance and Personnel will now commission GAD to provide additional scheme specific calculations. The cost to the Department of Finance and Personnel of the original GAD estimate for the Health and Social Care Scheme was in the region of £10,000. GAD has confirmed that to undertake further similar exercises for the other Northern Ireland public service schemes will cost in the region of £20,000 - £30,000.
- 4.45. It is important to note that this estimated cost is based on the assumption that the Northern Ireland Public Service Pension Schemes agree to adopt scheme designs that are the same as the final designs in the equivalent Great Britain schemes.
- 4.46. Should any of the public service pension schemes choose a different scheme design then the actuarial fees for each scheme could potentially exceed £100,000 and the total costing exercise could exceed £600,000.

- 4.47. The Coalition Government's programme for pension reform has had significant impacts for the completion of current scheme valuations. The final report of the IPSPC recommended that, where possible, data on pension schemes should be produced to common standards and using common methodologies, to allow comparisons to be made between them. The Assembly Bill will contain provisions to formalise scheme valuation processes across schemes.
- 4.48. Current HM Treasury guidance addresses the valuation processes which will apply for revised schemes. For the unfunded schemes, the initial level of the employer cost cap will be set with reference to 2012 scheme valuations. Actuarial valuations are used to measure the costs of the pension promises that are being made to the workforce and the benefits that will be paid out in the future. They are complex and highly technical procedures and HM Treasury has advised authorities with responsibilities for public service pension schemes, including the Minister of Finance and Personnel on behalf of the devolved schemes, that there is no longer a need to spend further time or resources in conducting the valuations which some schemes have pending or in process based on the existing cap and share arrangements. In many cases schemes have taken steps to remove the provisions for cap and share from schemes' rules. Valuation processes to assess scheme liabilities are ongoing and will continue to be reported and published annually in resource accounts for each scheme.
- 4.49. The Minister of Finance and Personnel has stated in his Assembly address on 26 November 2013 that the purpose of the Bill is to implement a policy decision taken by the NI Executive. The Executive is cognisant of macroeconomic issues associated with its policies, including the financial impacts for Departmental Budgets and public services will be incurred if its agreed policy for pension reform is not implemented. Spending more on public service pensions will effect a diversion of available funding from other areas. The NI Executive and Assembly will have further opportunity to consider and reflect on the macro-economic costs and social consequences that may be associated with content and timetable for this Bill when it comes before them in the coming months.
- 4.50. Research has been completed on youth unemployment by the Nevin Economic Research Institute (NERI) Quarterly Economic Observer and quotes the cost of 16 to 18 year olds not in education, employment or training (NEET) in the Northern Ireland economy 'to be very approximately in the region of £300 million or 1% of Gross Value Added in Northern Ireland'. This is based on estimates from a report carried out by The European Foundation for the Improvement of Living and Working Conditions (2012).
- 4.51. The NERI Quarterly Economic Observer also makes reference to previous research by the NI Assembly Research and Library Services, calculating the cost of youth unemployment in Northern Ireland to be £250m. This figure is based on estimates from a report published by the Prince's Trust in 2007, 'The Cost of Exclusion, Counting the Cost of Youth Disadvantage in the UK.'
- 4.52. The cited figure of the £300m cost of NEETS (Not in Education, Employment or Training) should not be interpreted as a potential cost of pension reform. This is based on research into the total economic cost of all NEETS in the labour market, not just those that might be impacted in some way by any initial reduction in job vacancies as a consequence of the implementation of pension reform.
- 4.53. Furthermore, nearly three-quarters (around £235m) of this estimate is attributable to a loss of potential earnings i.e. the wages these young people could have earned if they had been employed. While pension reform may impact on the age profile of those in work, it will not reduce employment levels, so these earnings and the economic activity associated with them will not be lost.
- 4.54. The remaining quarter of the £300m estimate (around £65,) relates to the cost of benefits that are paid to NEETS. Setting aside any differences in the rates paid, any increases in the

NEET unemployment benefits cost will be offset to some extent by a reduction in expenditure on pensions.

## The Bill in Westminster

### 4.55. Comment received:

*“At the time of writing, the Westminster Bill has yet to be completed. In the stages to date there have been a number of changes and it remains to be seen as to what the final form of the Bill will be. Given the timeline it is not acceptable to TUS that negotiations on the NI Bill should be shoehorned or truncated in order to meet unrealistic timeframes imposed by the Government at Westminster”.*

### Departmental Response

- 4.56. The Westminster Public Service Pensions Bill was progressing through its legislative passage during the consultation period and officials in the Department of Finance and Personnel, including the Office of Legislative Counsel which is preparing a draft of the Assembly Bill, have continued to monitor progress of the Westminster Legislation throughout its passage. During the legislative passage of the Westminster Public Service Pensions Bill the Coalition Government made a number of amendments. These were mostly minor and technical, or to clarify how provisions were intended to work. There were also consequential amendments incorporated which crossreference and update associated pension legislation. The Westminster Bill received Royal Assent on 25 April 2013 and is now the Public Service Pensions Act 2013. While there have been amendments to the Westminster Bill these have not been significant and there is no change to the main policy intention that the CARE scheme model should replace the final salary design for public service schemes or to the general approach for linking scheme pension age with state pension age. It should also be noted that no Opposition amendments were accepted during the legislative passage of the Bill.
- 4.57. The Department of Finance and Personnel established a Northern Ireland Public Sector Pensions Group (NIPSPG) in September 2010 for the purpose of discussion and information sharing on pension reform issues between the Northern Ireland Public Service Schemes. These schemes in turn shared these updates in meetings with their relevant trade unions. At UK level, the Coalition Government has consulted centrally with the major trade unions including the National Trade Union Committee (NTUC) comprised of the seven nationally recognised trade unions in the civil service (PCS, POA, Prospect, FDA, NIPSA, Unite and GMB) during the development of policy and plans for public service pension reform.
- 4.58. On 3 January 2013 the Department of Finance and Personnel initiated a dialogue with the Northern Ireland Committee of the Irish Congress of Trade Unions (NIC-ICTU) on the establishment of a Collective Consultation Working Group for the specific purpose of policy consultation on the Bill. This group facilitates consultation between the Department of Finance and Personnel, representatives from each Department with responsibilities for the main public service pension schemes and TUS representatives nominated by NIC-ICTU. The Collective Consultation Group is now the recognised forum for consultation on the Bill, and at which NIC-ICTU has agreed to provide central representation for all public service employments within the Bill's remit.
- 4.59. The Department of Finance and Personnel consultation on the policy underpinning the Bill the has been carried out in line with the appropriate guidance and timescales for Departmental consultations as set out in OFMDFM guidance on Executive Bill procedures and distribution of Departmental consultations.

### Core Provisions

4.60. Comment received:

*“As per paragraph 20, the post-2005 outcome addressed these issues and it must therefore be concluded that the intent of the Government is to again attack public servants and make them pay for the wider economic mismanagement of the UK”.*

### Departmental Response

4.61. Please see above response to comments on: **Background: Why are Reforms Needed?**

### CARE

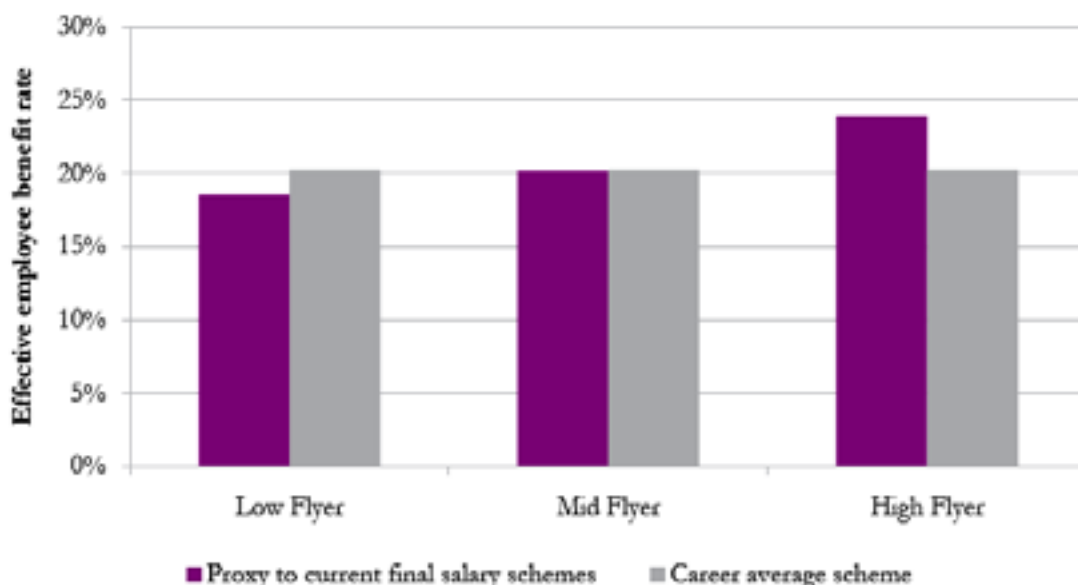
4.62. Comment received:

*“TUS does not accept that any case has been made to remove the final salary link, it is accepted that some TUS members are already covered by a CARE Scheme i.e. NUVOS PCSPS (NI) members. There are options/solutions that can deal with what are deemed to be excesses in terms of those who enjoy pensions for example that produce annual income into six figures. Such examples should be dealt with by a fairer general taxation regime”.*

### Departmental Response

4.63. The IPSPC considered a number of possible options to address the inherent inequities it had identified in the final salary scheme design. These included notional and collective defined contribution, and cash balance models. The Commission recommended the CARE option as providing the best balance weighed against the Commission's stated principles and in terms of the distribution of risks between member and taxpayer. On balance, the Commission decided to recommend career average as the option that provides “more certainty for members is better understood and will be more practical to implement” (Independent Public Service Pensions Commission: Final Report - 10 March 2011 p.10).

4.64. The table overleaf illustrates the distributional impact of moving from final salary to CARE:



*“The chart shows the effective employee benefit rate (EEBR), the value of the pension benefit, net of employee contributions, accrued annually by an average member of the scheme expressed in terms of a percentage of pay, for both a proxy to the current final salary schemes and an example CARE scheme. Under the example CARE scheme the ‘Effective Employee Benefit Rate’ is higher for a low flyer than in the proxy to the current final salary schemes, while for a high flyer it is lower. A CARE scheme therefore redistributes*



*pension benefits from high flyers to low flyers. This redistribution occurs because, for a fixed cost, the savings from the removal of the final salary link for high flyers can be recycled into providing a better level of benefit for other scheme members". (Independent Public Service Pensions Commission: Final Report - 10 March 2011 p.10)*

- 4.65. The rationale for the move from final salary to a CARE model has been endorsed as 'sensible' in achieving the aim of increasing fairness between 'high' 'mid' and 'low' flyers by the Institute for Fiscal Studies in that it "makes the scheme less generous than a final salary scheme to high flyers who would see their salaries increase by more than average earnings, but it will also make the scheme more generous than a final salary scheme to those whose salary grows by less than average earnings" (Public service pension reforms: an improved structure, but impact on generosity and cost as yet unknown - IFS March 2011).
- 4.66. The Pensions Policy Institute also commented on the equalising effects of the CARE model: "If two median earning 40-year-old men had joined the NHS scheme before 1 April 2008, the high-flyer would have had a pension benefit of 29% of salary, compared to 11% of salary for the low-flyer. Under the Coalition Government's proposed reforms high-flyers and low-flyers have a pension benefit worth the same percentage of salary". (PPI Briefing Paper on the impact of the Coalition Government's proposed reforms of the four largest public service pension schemes: NHS, Teachers, Local Government and the Civil Service, October 2012, P12).
- 4.67. The policy for taxation is owned by HM Treasury. Neither the NI Assembly nor the NICS Departments with responsibility for public service pension schemes currently have any scope to adopt alternative approaches. Linking NRA to SPA
- 4.68. Comment received:

*"See comments elsewhere in this response as to the need to assess the macro economic impact in Northern Ireland. TUS believes without prejudice that at the very least there is value in establishing a Northern Ireland Review Group, similar to that established for the NHS Scheme to examine the increased NRA for various occupational groups across the Schemes. Another option that should be examined is the flexible decade of retirement, this would allow for people to leave early without actuarial deductions on the basis that going forward others will wish to stay beyond the NRA".*

#### **Departmental Response**

- 4.69. Please see above response to comments on: **Managing Pension Costs Also, the Public Service Pensions Bill will implement a framework of core principles common to all schemes within which sponsor Departments will have scope to adjust scheme designs to suit the need of particular workforces. This will include scope to vary options for actuarial reduced retirement before the scheme pension age. These options and flexibilities will be addressed in consultations at the secondary legislation.**

#### **Fair Deal**

- 4.70. Comment received:

*"TUS would wish to see specific mention in the Northern Ireland Bill to an agreement on "Fair Deal". In future Fair Deal would be achieved by members being allowed to stay in their existing public service schemes on first and subsequent transfers to the private sector. TUS sees this as a key protection both to the scheme members and the continuing sustainability of the schemes. 'Fair Deal' is important to scheme members, because it means their pension provision will not worsen if they are outsourced. It is important for the continuing sustainability of the schemes because if large numbers of contributing members are lost to the scheme it means the schemes will become increasingly 'cash poor' with the gap between contributions coming in, and pensions being paid, widening. In addition, for funded schemes it will mean the proportion of younger members against the total membership is*

*likely to decline, with the result that the older profile of the scheme members will mean the cost of the scheme increasing”.*

#### **Departmental Response**

- 4.71. The Department is committed to remaining in line with the HM Treasury Fair **Deal policy, its reform and to commitments made to ensure that members of the schemes who are compulsorily transferred to independent contractors can retain membership of those schemes.**
- 4.72. The Bill will make provision to enable each Department with scheme **responsibility to extend access to public service pension schemes to appropriate groups or individuals such as members who are compulsorily transferred out to the private sector. The Bill will allow scheme regulations to make provisions for pensions for other employees who would not otherwise be members of the scheme.**
- 4.73. Departmental officials are liaising with HMT on how the new Fair Deal policy **will be implemented, and the impact on those who have already been transferred out of the public sector under the old arrangements. It would be premature to put something on the statute book while this work is under way.**

#### **Final Salary for Accrued Service**

- 4.74. Comment received:

*“This is not giving anything, these are acquired rights related to pension as deferred pay. It is also the case that to do otherwise would be contrary to the convention on Human Rights as it is deemed that pensions are property and to have any erosion of the acquired entitlement would constitute theft of personal possessions”.*

#### **Departmental Response**

- 4.75. The final IPSPC report commented that “legally the full extent of those accrued rights is inherently uncertain. For example, general provisions of occupational pensions law require that an active member is at least awarded a deferred pension, but the actual nature of a member’s rights and protections has to be considered and can vary scheme by scheme, depending on scheme rules and how the scheme has been operated”. (Independent Public Service Pensions Commission: Final Report, 10 March 2011 p.152).
- 4.76. However, the commitment to protect accrued pension rights was one of the main tenets of the terms of reference of the IPSPC inquiry.  
([www.hm-treasury.gov.uk/indreview\\_johnhutton\\_pensions\\_tor.htm](http://www.hm-treasury.gov.uk/indreview_johnhutton_pensions_tor.htm)).
- 4.77. The Commission recommended the preservation of the final salary link for past service for current public service pension scheme members to achieve this and the Department has adopted the approach based on the Commission rationale.

#### **Cap/Collar**

- 4.78. Comments received:

*“TUS does not accept the cost basis of the HMT/GAD model scheme, nor the two papers of November 12 on cap/collar and triennial review mechanics. The cost envelope was worked backwards to suit what Government determined would be the maximum amount it would contribute to the schemes. The impact of breaching the collar will only result in further damage to schemes by increased opt outs as the only two solutions are either reduced benefits and/or further additional employee contributions. An additional issue relates to the correlation between increased NRA and ill-health retirements, these costs should not be included as they relate directly to the Governments decision to both increase NRA and to further link it to increases in SPA.*

*The cost sharing aspect was one of the post 2005 reforms that discussions had only commenced on within the various schemes.*

*TUS also has concerns regarding the direction taken on possible closure to existing Injury and Compensation Schemes. We have already set out our understanding that existing public service schemes should not be closing but would be changed from a scheme change date to reflect the respective scheme specific agreements. We believe the emphasis in this section should be on continuing existing injury allowance arrangements in accordance with the existing scheme regulations”.*

### **Departmental Response**

- 4.79. An employer cost cap will be introduced to cover unforeseen events and trends that lead to significant changes in scheme costs. The employer cost cap is intended to provide backstop protection to the taxpayer to ensure that risks associated with pension provision are shared between employers and scheme members. This means that changes to contribution rates due to ‘member costs’ will be controlled by the cap. The cap will be set with reference to the results of the first valuation of the reformed schemes.
- 4.80. So that small fluctuations in scheme costs do not lead to frequent small changes in the scheme after each valuation, there will be a two percentage point margin above and below the cap. The upper margin will form a ‘ceiling’ on the employer contribution rate, with the lower margin forming a ‘floor’.
- 4.81. Action will be required to restore costs to the level of the cap if the scheme costs move above the ‘ceiling’ or below the ‘floor’. This may be achieved via adjustments to member benefits accruing in respect of future service, adjustments to member contributions, or via some other method. The employer cost cap will be symmetrical so that, if reduction in member costs fall below the ‘floor’, members’ benefits will be improved.
- 4.82. Cost pressures which arise from financial or technical changes, including changes to the discount rate, will be met by employers. The cost cap will control the risk associated with ‘member costs’ changes in costs such as actual or assumed longevity of careers or the age and gender mix of the workforce.
- 4.83. As only active members will see their benefits or contributions adjusted if the ceiling or floor is breached, it is considered that it would be unfair to control all of the costs associated with pensioner and deferred members of the existing pension schemes. These elements of costs will therefore not be controlled by the cost cap mechanism.
- 4.84. The cost cap will control all other member cost risks, including the past and future service cost risks associated with:
  - Active members of the reformed schemes, including any service they have in the existing schemes;
  - Deferred and pensioner members of the reformed schemes; and
  - Transitionally protected active members of the existing schemes.
- 4.85. Scheme valuations will take place periodically to assess how the cost of the scheme has increased or reduced. In the event that member costs drive the cost of the scheme above the cap or below the floor, there will be a period of consultation with relevant groups before changes are made to bring costs within the cap and floor. If agreement cannot be reached through consultation, the accrual rate will be adjusted as an automatic default.

### **Protections**

- 4.86. Comments received:

*“The protections if required as a consequence of the NI Executive/Assembly forcing changes should run for 10 years plus the taper from the implementation date of the revised schemes. De facto they are not 10 year protections given they ran from 1/4/12 yet it is planned that the implementation date is 1/4/15, thus really only 7 year protections (with LCPS/NILGOSC having a proposed 1/4/2014 date).*

*TUS supports the governance arrangements for NILGOSC in respect of scheme oversight/administration. There needs also to be proper negotiating bodies established to deal with scheme regulations, cap/collar, etc. The DOE LGPS/NILGOSC Review Group could form the basis for such scheme specific bodies. In fact, Lord Hutton in his final report recognised member representation on pension fund committees represented best practice and should be introduced”.*

#### **Departmental Response**

- 4.87. The policy is to protect those closest to retirement who are at least able to make changes to their lifestyle/ career/ retirement plans.
- 4.88. Transitional arrangements would provide protection for those close to retirement. Accordingly, members who, on 1 April 2012, have 10 years or less to their current Normal Pension Age will see no change to when they can retire, or any reduction in the amount of pension they receive at their Normal Pension Age. These staff would remain in their existing arrangements up to and including the point at which they draw their pension..
- 4.89. Staff in the ‘tapering group’ (see detail in collective departmental response to individual comment previously) will be able to take their “Part 1” pension at their current Normal Pension Age, including any additional accrual they build up post 2015. If they remained an active member after the transitional protection has ended, they would then begin to accrue “Part 2” pension in the new scheme, which would become payable in full from the Normal Pension Age of the new scheme (or taken early with an actuarial reduction).

#### **Governance**

- 4.90. Comment received:

*“TUS supports the governance arrangements for NILGOSC in respect of scheme oversight/administration. There needs also to be proper negotiating bodies established to deal with scheme regulations, cap/collar, etc. The DOE LGPS/NILGOSC Review Group could form the basis for such scheme specific bodies. In fact, Lord Hutton in his final report recognised member representation on pension fund committees represented best practise and should be introduced”.*

#### **Departmental Response**

- 4.91. The Department notes the Trades Union support for the governance arrangements for the Local Government Pension Scheme (Northern Ireland). The Pension Board will have an equal number of employer and employee representatives.
- 4.92. The Department also notes the Trades Union support for schemes adopting the model of the LGPS(NI) Review Group when considering a Scheme Advisory Board. The central purpose of the scheme advisory board will be to consider and advise on the desirability of future changes to the scheme. The Board will advise the responsible authority on any matter that it asks the board to consider, whether wide ranging or focusing on a single issue.
- 4.93. The Local Government Pension Scheme (Northern Ireland) Review Group was set up in 2009 as a result of comments, received to the consultation on the new look Local Government Pension Scheme, that there should be a body to monitor the implementation of the new regulations and make recommendations to Minister on any changes required. The Review group is chaired by a senior official of the Department. There are 4 employer representatives

and 4 trade union representatives. 2 officers from NILGOSC (the scheme administrator) act as advisors to the Review Group.

- 4.94. It would be for each Minister with responsibility for each public service pensions scheme to finalise the detail of arrangements in scheme regulations, within the scope of the Bill

### **Twenty Five Year Guarantee**

- 4.95. Comment received:

*"There is no reference to this in the document yet it is a fundamental tenant of the Government's position, albeit wiped out as a consequence of the Single State Pension proposals".*

### **Departmental Response**

- 4.96. The Bill includes provisions relating to "protected elements" of the scheme within the "protected period". The "protected elements" are:

- (a) the extent to which the scheme is a career average revalued earnings scheme;
- (b) members' contribution rates under the scheme; and
- (c) benefit accrual rates under the scheme.

The "protected period" is stated to end on 31 March 2040.

- 4.97. The Bill also contains provisions for consultation on protected elements and a requirement to lay a report before the Northern Ireland Assembly if it is proposed to make changes to the protected elements of the scheme within the protected period. These provisions are in line with those contained in the Westminster Public Service Pensions Act 2013..
- 4.98. The programme for reform of public service pensions is fair and sustainable, and one that can endure for 25 years. This means that no changes to scheme design, benefits or contribution rates should be necessary for 25 years outside of the processes agreed for the cost cap. To give substance to this, the Coalition Government has included provisions on the face of the Public Service Pensions Act to ensure a high bar is set for future UK Governments to change the design of the schemes. This will be replicated in the Bill.

### **General NI Position**

- 4.99. Comments received:

*"It is TUS view that the NI Executive and Assembly should fully exercise its devolved authority on public service pensions. There is no justification to follow the Westminster Bill, especially when predicated upon dubious assumptions as to the NI Block impact.*

*As clearly pointed out pensions are both a negotiable matter and deferred pay therefore the NI Executive had no right to come to a unilateral decision on 8/8/12 without any negotiation or consultation with trade unions and scheme members.*

*The timeline is wholly unacceptable. At 5 April the position for the LGPS England/Wales is still not clear thus making it impractical for NILGOSC changes from 2014. The 2015 date for other schemes is also not viable, given the timeline for the Bill and the need for scheme-by-scheme negotiations on the regulations.*

*No reference has been made to the November 12 HMT Paper on Fair Deal. TUS does not wish to see the Westminster approach being taken, it is TUS's position that full Fair Deal provisions need to be on the face of the Bill".*

### **Departmental Response**

- 4.100. Noted and specific issues referenced have been covered within this response document.

### **EQIA Screening**

- 4.101. Comments received:

*“TUS fully rejects the decision to screen out a full EQIA. It is TUS’s view that this is a pre-determined decision to (i) help expedite passage of the Bill and (ii) to deliberately ignore clear equality issues that arise.*

*For example, a key concern of the Fire Brigades Union (FBU) with the proposed Bill on Public Service Pension Reform is the imposition of a Normal Pension Age (NPA) of 60 for all Firefighters. A recent independent report commissioned by the Westminster Government broadly supports the concerns of the FBU and makes it clear that the majority of current Firefighters will not be fit enough to work to 60. It warns that in such cases, “the only option is to leave or have their contract terminated on capability grounds without early payment of pension.”*

*The report shows that based on actual information from four fire and rescue services that two thirds (66%) of those aged 55-60 are below the recommended fitness standard of 42 mL.kg-1.min-1. Many fire and rescue services’ fitness policies, including the one used in Northern Ireland, utilise this recommended fitness level.*

*It also warns that “It is likely that a substantially larger proportion of women will find it hard to maintain fitness at the required level, leading to a disproportionate number becoming unfit for firefighting before age 60”. The FBU is very concerned that the proposed changes will make it difficult, if not impossible to recruit and retain adequate numbers of female Firefighters within the Fire Service. We therefore believe that a full EQIA should be carried out”.*

### **Departmental Response**

- 4.102. The Equality screening document represents the department’s appraisal of the impacts for section 75 groups based on the data available when presented and based on the impacts of the common features of the policy which will apply across all schemes. Consideration of the scheme-specific equality impacts is being undertaken separately by the relevant Departments with responsibility for implementing the agreed policy in secondary legislation for each of the public service pension schemes.
- 4.103. The DFP screening exercise identified minor impacts in areas of age and gender but concluded that these impacts can be shown mitigated or are attributable to factors external to the policy and that a full Equality Impact Assessment is not required.
- 4.104. For example, Transitional measures contained in the Bill provide protections which will mitigate immediate impacts of increased scheme pension ages for current members closest to retirement. This group will effectively have the least amount of time to adjust to the changes. As only older members will benefit from transitional protection the fact they may have accrued more benefits with a link to final salary and protected pension age means that this group may receive higher pensions than members of a younger age. However this potential imbalance is mitigated by the fact that younger and future members will have more opportunity to benefit from increases in life expectancy in general. The policy also reflects the general Minor approach adopted by the Coalition Government for the removal of default pension ages, to facilitate trends for longer working lifetimes, and the general increase in pension ages in order to manage trends for increasing life expectancy and options for deferral of retirement. Scope for public service schemes to provide options for members who decide to take pension benefits earlier than normal scheme pension age, (with an actuarial reduction for early payment), and to compensate those who are unable to work full careers in

- public service due to impaired health (ill health retirement) will be continued in the reformed schemes.
- 4.105. The monitored public service workforce in Northern Ireland is predominantly female and an increase in scheme pension age may therefore affect more women than men. However overall there is no overt inequality in treatment of women as the differential is a consequence of an external factor. The policy itself will apply irrespective of the gender of the scheme member.
  - 4.106. Existing Government legislation for State Pension Age advances equalisation between men and women and the removal of differentials which have historically been reflected in previous policy. The policy to link normal scheme pension age to state pension age is in line with this general approach for equalisation and will not disproportionately impact members on the basis of their gender any differently than is currently the case within the Government's current agenda for equalities. A policy intention of the new CARE scheme model is to address an existing differential imbalance in the calculation of benefits in final salary schemes which can disproportionately favour staff who experience high levels of salary progression as opposed to those with a flatter earnings profile throughout a public service career. As a group, males employed in public service in Northern Ireland typically earn more than women and have higher salary progression profiles.
  - 4.107. The Independent Public Service Pension Commission found that staff with high salary progression can receive final benefits worth twice as much per £100 of employee contribution than those with limited or flatter salary progression. An effect of the policy will be to address existing disproportionality. The overall consequence for gender groups will be equalisation of benefit accrual in line with the Coalition Government objective that pension benefits for future service are fairly distributed across scheme membership and affordable for the taxpayer. The change in scheme pension age may have a more significant impact on men than women, as statistically males have an overall shorter life expectancy than females and historically pensions are paid to men for a relatively shorter period. However this potential differential is mitigated by trends for improvements in life expectancy generally.
  - 4.108. The Office for National Statistics predicts for those born in 2035 is 94.2 for men and 97.2 for women. Additionally this expectation of longer pension payments for women is not a consequence of the policy itself and represents no material change from the current position. The apparent benefit to women of receiving pension payments for longer is offset by the fact that men employed in public service in Northern Ireland typically continue to earn more than women, and higher earners will continue to receive higher pensions in the CARE schemes albeit from a fairer more proportionate method of calculation. Higher earners generally also have a higher life expectancy than lower earners and thus may have an increasing time spent in receipt of retirement benefits. The retention of a final salary link for the calculation of pension benefits for accrued service also means that general levels of pension for existing male staff will remain higher, which further mitigates any differential.
  - 4.109. We have committed to work with Departments to augment the scope of the data feeding into the screening exercise and when all relevant documentation has been received the screening document will be updated.
  - 4.110. The independent report commissioned by the Westminster Government report referred to making recommendations for exceptional terms for early payment of pension benefits to be incorporated in scheme regulations to accommodate cases where scheme members may leave service before the pension age as a consequence of failure to meet the required fitness standards.
  - 4.111. These are issues which will be discussed at the secondary legislation stage for the fire-fighters scheme. The process for scheme reform provides scope to modify elements of scheme design to suit the individual needs of the workforce.

- 4.112. It can also be noted that the retirement age for fire-fighters joining the service was changed to 60 years of age in 2006. The provision in the Westminster Bill permits protection for this group and will introduce a retirement age of 60 for existing staff, subject to the transitional protection arrangements whereby some staff will retain the earlier age of retirement.

## Part 1 & Implementation Factors

- 4.113. Comments received:

*“TUS contends that the proposals do represent a new policy rather than a change to existing policy. The scale of the changes are so draconian and fundamental to render the new schemes as being incomparable with the current schemes”.*

*“As per comments on the consultation document TUS seriously questions the financial analysis of the costings”.*

### Departmental Response

- 4.114. See response to Managing Pension Costs. In short, the Department of Finance and Personnel will now commission GAD to provide figures for the other Northern Ireland Pension Schemes. GAD charged in the region of £10,000 for the estimate for the Northern Ireland Public Service Health scheme and has confirmed that to undertake further similar exercises for the other Northern Ireland schemes would cost in the region of £20,000 - £30,000. This estimated cost is based on the assumption that the Northern Ireland Public Service Pension Schemes agree to adopt scheme designs that are the same as the final designs in the equivalent Westminster – based schemes.

### Stakeholders Affected

- 4.115. Comments received:

- *“This is flawed as clearly the proposals impact upon trade unions in the representation of their members’ rights and entitlements with regard to pensions”.*

Available Evidence Section 75 Category.

*“This is a very flawed, incomplete and gross over simplification of the totality of the issues and the inter-relationships between Section 75 categories”.*

Racial Groups:

*“There is no evidence of any research into the uptake/opt-out of scheme membership by different racial groups. Pensions are a complex issue and the various proposed changes add greatly to such complexity. It is possible that Racial Groups are more likely to have difficulties understanding and dealing with the complexities around pensions”.*

Age:

*“It is clear that the proposals have age implications which need to be fully assessed. All schemes have full age profile data to state age profile is not available for NILGOSC is a clear distortion of the facts. If not then it is a demonstration that DFP did not go looking for the data”.*

Marital Status:

*“As with age in respect of the data. In fact all schemes require nomination forms to be completed as well as dependants data to be held”.*

Men/Women Generally:

*“Again all schemes have full data sets”.*



### Needs, Experiences and Priorities:

*“Given the total lack of research and data gathering/analysis it is not surprising such N/A conclusions are drawn. A proper assessment would produce differing results”.*

### Part 2 Screening Questions:

*“Given the comments on paragraphs 36-47 above TUS rejects the conclusions in respect of the following Section 75 groups in particular; Age, Men/Women and Dependents”.*

### Part 3 Screening Decision:

*“To rely on the basis that all that is happening is a transposition of the Westminster Bill to Northern Ireland is not acceptable and not a defence against a full EQIA.*

*The FBU have provided evidence with regard to adverse impact on women fire-fighters and the LGPS England/Wales EIA identified equality impact issues.*

*The decision of the NI Executive is not binding as the ultimate authority rests with the NI Assembly in respect of the passage of legislation.*

*The screening is flawed due to the massive evidence/data gaps in spite of the readily available existence of such data.*

*TUS will lodge a complaint to the Equality Commission should a full EQIA not be completed”.*

### Departmental Response

- 4.116. Please also refer to above response to Equality Screening. Also, OFMDFM Legislative Programme Secretariat has been consulted on potential requirements for the Department to conduct further screening on the Draft Bill, when this is produced. Legislative Programme Secretariat has advised where the Department has carried out screening and consultation on policies carried in the Bill, further screening and consultation on a draft of the Bill is not required. Strategic Equality Branch has reviewed the Equality Screening document and supports the conclusion that a full EQIA is not required. The screening exercise addressed the core provisions that will apply to all public service pension schemes. Consideration of the scheme-specific equality impacts will be undertaken separately by the relevant Departments with responsibility for implementing the agreed pension reform policy in secondary legislation.

### Conclusions

- 4.117. Comments received:

*“TUS, without prejudice to its opposition to the totality of public sector pension scheme reforms and the interface with the proposed revision from April 2016 of the state pension provisions, believes that the decisions of the NI Executive, DFP Minister and DFP Officials are wholly flawed.*

*The comments in this response clearly identify such failings. TUS calls on the NI Executive to scrap the proposals in their entirety.*

*In addition TUS calls on the NI Executive to reopen negotiations to include an examination of the impact of the RPI to CPI indexation change, additional employee contributions and the interface with the state pension proposals”.*

### Departmental Response

- 4.118. The NI Executive have been fully briefed on the policy intent and the implications of the changes in relation to the Public Service Pensions Bill, and increased member contributions,

both in respect of the impact on the membership and the potential cost to the Northern Ireland Block for nonimplementation prior to making Executive decisions on these matters.

## Individual Trade Union Issues (Not Covered In The NIC-ICTU Response)

### Unison Response

#### 4.119. Comments received:

*“All funded public sector schemes in the European Union, including those made under statute with a state guarantee are covered by the requirements of the EU Directive – Institutions for Occupational Retirement Provision (IORP). The provisions in the Northern Ireland Bill must not fall short of the requirements of a funded pension scheme, which the LGPS is.*

*The Westminster Bill sets out the local authority becoming the scheme manager for each fund, with a pensions committee and/or a local board, but does not say how that board is constituted. Currently the pensions committee is run under local authority law, on which the councillors sit in the lead party majority, with a fiduciary duty to tax payers and not to scheme members.*

*This means that that the current governance system sits outside of the EU IORP Directive despite its transposition into UK law via the Pensions Act 2004 and the Occupational Pension Scheme Investment regulations. UNISON’s counsel opinion, which we submitted in detail to the Hutton Commission, is clear that the IORP Directive Applies to the LGPS funds.*

*Governments can exempt statutory IORPs, such as the LGPS from Articles 9 to 17 of the Directive’s 22 principal articles. This is by virtue of Article 5 of the Directive which says.*

*“Article 5: Member States may choose not to apply Articles 9 to 17 to institutions where occupational retirement provision is made under statute, pursuant to legislation, and is guaranteed by a public authority.”*

*However, the major issues of non-compliance of the LGPS arise from Articles 8 and 18 of the Directive.*

*Article 8 requires legal separation of the IORP (in this case each LGPS fund) from the employer. Article 18 requires prudential investment rules, investments to be made in the sole interests of scheme members and beneficiaries and conflicts of interest resolved in their favour.*

*We believe that the Assembly must introduce the directive to the LGPS by amending the Bill or face potential legal challenge.*

*UNISON would suggest an amendment to show that the European Directive – Institutions for Occupational Retirement Provision (IORP) applies to public funded Public Service Schemes such as the LGPS.*

*UNISON does not believe it is appropriate for articles 9 – 17 to apply to a statutory funded scheme such as the LGPS and member states can choose not to apply these articles. However, there is no such power to dis-apply articles 8 & 18.*

*UNISON would suggest that it makes clear that the Pensions Manager and Pensions Board cannot be one and the same person or persons. In practice the two roles are distinct so a tightening up of the wording we believe would be advisable. The local authority cannot run the pension system, an independent board could if it is separated from the sponsoring employer, and an example of this is the London Pension Fund Authority.*

*UNISON believes that appropriate wording to reflect the above will lead to greater transparency and more effective governance. It is particularly important at a time that discussions are taking place over the extent of possible infrastructure investments that article 8 & 18 are taken into account.*

*UNISON has pushed for member representation on pension scheme committees for many years. Lord Hutton in his final report recognised member representation on pension fund committees represented best practice and should be introduced. UNISON would suggest that every pension board should have member representation. Ideally it should provide the same level of representation in public service pension schemes as is required in private sector defined benefit schemes. After the 'Maxwell' pension scandal and the findings of the Goode Committee, the Pensions Act 1995 required all defined benefit schemes to have a minimum proportion of member nominated trustees. This is still in force as amended by the Pensions Act 2004. The minimum proportion was initially and remains 1/3 of the Trustee Board but the government has given itself the power to increase this to 1/2 at some time in the future.*

*The argument has been in the past that an occupational pension scheme that is made under statute like the Local Government Pension Scheme means that members of the scheme do not bear the same level of risk as colleagues in the private sector. In fact, it has become clear that while accrued benefits are effectively underwritten by the Local Authority, investment performance together with employers paying very low levels of contributions during the 1980s and early 1990s has significantly contributed to the size of LGPS past service deficits. The effect of low contributions and declining investment returns has had a greater effect on the size of the deficits than the increase in life expectancy. It is clear that the cost pressure caused by these deficits has been a major factor influencing decisions to change future pension provision in the past. So although under the current cost cap proposals investment returns are excluded, the members of the scheme do bear significant risk if the performance of the funds do not result in alleviating cost pressure and should have representation on the pension boards".*

#### **Departmental Response**

- 4.120. Unlike many of the Local Government Pension Scheme funds which are managed by local authorities (councils), the Northern Ireland fund is managed by the Northern Ireland Local Government Officers Superannuation Committee (NILGOSC). NILGOSC was established specifically to administer the schemes and manage the fund. The NILGOSC board includes scheme member representatives.

#### **Teacher Unions**

- 4.121. Teacher union responses included some specific issues relating to teachers/education. These focused mainly around health issues (burnout) and recruitment and retention.

#### **INTO Response**

- 4.122. Comments received:

*"It is vital for INTO that we take the opportunity to stress the serious concerns we have over the implications of these entire pension reforms on the teaching workforce. Most individuals enter the teaching profession as a career and over 35 or more years' service they give a lifetime's commitment to the education of at least 2 and possibly 3 generations of the NI workforce. To now move to change the retirement age, reduce their pension entitlement and harmonise their retirement age with the default state retirement age will destroy the teaching workforce. INTO members and other professional teachers will struggle to maintain a professional service at age 68. The NI Executive must be clear that special protections must be considered for teachers to allow them to give a professional service, retire with dignity and not feel that they must remain until ill health or burnout forces them to retire.*

*INTO proposes that special arrangements should be agreed, similar to firefighters and mental health nurses, to allow teachers over 60 to secure a pension on the basis of their accruals, without actuarial reduction.*

INTO would highlight that more important than the new basis of calculating the pensions will be the proposed higher retirement age. Some existing staff who retire at 60, including teachers, under their current rules will be told they must now work to 65 for a full pension. And that normal pension age, it is now proposed, should rise even further, to 66, 67 and eventually 68, in tandem with the government's existing plans for the state pension. The effect of this will be just as profound as changing the underlying method for calculating someone's pension. We feel that this approach is not reflective of the demands placed on public sector workers, including teachers and will be ultimately a false economy as sickness absence levels rise and the public sector cannot meet the demands of government".

#### **Departmental response**

- 4.123. The Department notes the comments on the impacts for teachers of increased pension ages. The Independent Public Service Pension Commission examined issues which could warrant concessions from the general approach to link future scheme pension age to state pension age for certain groups of public service employees. The final report of the Commission did not make recommendations for a divergence from the general approach for any groups outside of those for emergency services, i.e. police and firefighters and the armed forces.
- 4.124. The process for reform for schemes made under the Bill provides scope at the secondary legislation stage for each Department with scheme responsibility to modify elements of scheme design to suit the individual needs of the workforce. These will include options for early payment of actuarially reduced pension where staff choose to retire early, and provisions for ill-health retirement with early payment of pension where staff are unable due to medical reasons to continue in employment until the normal pension age.

#### **UNITE Response**

- 4.125. Comment received:

*"There is a real concern amongst healthcare staff that the expectation to work on until age 68 is not realistic in many roles and professions. There needs to be a more realistic evaluation of the physical and dextrous roles performed and age will play a significant part in such an analysis".*

#### **Departmental response**

- 4.126. See Paragraphs 4.123-4.124 above
- 4.127. It was agreed as part of the NHS Pension Scheme Heads of Agreement to set up a tripartite review between the Department of Health, NHS Employers and the NHS Trade Unions to address the impact of working longer in the NHS. The outcome of this review will be recommendations to the Health Ministers including for example how employers can support an ageing workforce, the use of existing NHS pension scheme flexibilities and suggestions for how career pathways can be modified to improve health and well being for staff.

#### **UNITE Response**

- 4.128. Comment received:

*"The NHS pension scheme is not in deficit nor does it show any likelihood of moving into a negative position. In recent years the net position of the scheme has shown a £2 billion surplus which by any measure is a healthy position. The reference to Government figures showing an increase in costs up to £32 billion indicate the rise in salary's in the service and consequently a proportionate rise in members' contributions which goes unmentioned. Also strangely missing is the fact that the 1998 agreement increased the members' contributions*

by 0.5% and capped the employer's % contribution. It also gave an assurance that if the condition of the fund became critical then a reassessment of the arrangements would be calculated with the employers' rate continuing to be capped".

**Departmental Response**

- 4.129. "The HSC Pension Scheme has built up future pension promises (liabilities) as assessed at last actuarial valuation in 2004. As the scheme is unfunded (i.e. there is no 'pot' of money or assets set aside from which to pay pensions), the Government pays pensions from the public finances as they fall due. It is true that at the moment annual scheme income from contributions exceeds annual expenditure on pension benefits in payment, creating a positive cash flow which some respondents identify as being a 'surplus'. However, this is not an indication of the scheme's long-term sustainability as those paying contributions to create the 'surplus' are also building up pension promises that will need to be paid in the future. This 'surplus' is expected to decrease as a generation of members reach retirement and start to draw their pension. This will see the current gap between contributions made and benefits paid disappearing over time".

## 5. Conclusion and Next Steps

- 5.1. Civil Service Pensions is grateful for all responses to the consultation, which show how important pension arrangements are to Public Servants and their representatives. Civil Service Pensions would like to thank every individual and organisation who submitted their views.
- 5.2. The department has concluded that the case for change still stands. The costs of pensions are increasing as people live much longer than previous generations. These additional costs have generally been funded by taxpayers, which is unsustainable. Although an increase in life expectancy is good news, the position where more and more years are being spent in retirement is simply not affordable. A long term solution is required that will last a generation and that will be fair to public service workers and fair to other taxpayers.
- 5.3. HM Treasury published the Coalition Government's preferred pension scheme design in November 2011 and following discussions with trades unions, scheme-specific alternatives/ models based on the principles contained in the Coalition Government's preferred design were developed.
- 5.4. The Northern Ireland Executive has already agreed, on 8 March 2012 to adopt this approach to pension reform for the public service in Northern Ireland.
- 5.5. The other Northern Ireland Public Service Pension Schemes have also given careful consideration to the issues that were raised in consultation and have commented where relevant. They have noted that the introduction of the Public Service Pensions Bill in the Northern Ireland Assembly, as proposed in the consultation document published on 21 January 2013, should be implemented with the following core provisions:
- a move to a Career Average Revaluated Earnings (CARE) scheme model of pension saving;
  - a direct link to equalise schemes' Normal Pension Ages with the State Pension Age (except for the police and fire and rescue services);
  - a Normal Pension Age of 60 (subject to regular review) for the police and fire and rescue services;
  - a final salary link for any final salary pension accrued prior to the date at which the new schemes will commence;
  - a scheme cost cap with a default mechanism to maintain costs within set cost floor and ceiling limits;
  - transitional protection measures for scheme members who were within 10 years of their existing Normal Pension Age on 1 April 2012; and,
  - revised measures for scheme governance.
- 5.6. The Department of Finance and Personnel will now proceed with the introduction of the Public Service Pensions Bill in the Northern Ireland Assembly.

# Public Service Pensions Bill

## Public Service Pensions Bill

From: Judith Finlay

Date: 6 June 2013

To: Shane McAteer

## Summary

Business Area: Civil Service Pensions, Human Resources Pension Division.

Issue: Pre-introduction consideration of the Public Service Pensions Bill.

Restrictions: Restricted – Papers embargoed until introduction of the Bill.

Action Required: The Committee to note that the Bill is to be introduced in the Assembly - First Stage 17 June 2013, 2nd Stage 25 June 2013.

1. Officials last briefed the Committee on 22 May 2013 on the outcome of the Consultation on the policy of the Public Service Pensions Bill and the Departments intention to proceed with the introduction of the Bill.
2. I attach for the Committee's consideration an advance copy of the Public Service Pensions Bill and its accompanying Explanatory and Financial Memorandum. You will be aware these documents are issued 'In Confidence' until the introduction of the Bill into the Assembly. It is expected that the Bill will be introduced into the Assembly on 17th June 2013 for First Stage, and then 25th June for Second Stage.

*Embargoed until the introduction of the Bill into the Assembly*

This Memorandum refers to the Public Service Pensions Bill, (Northern Ireland) as introduced in the Northern Ireland Assembly on [Bill Office will insert date], (Bill [Bill Office will insert No.] 2000)

## **PUBLIC SERVICE PENSIONS BILL**

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### **EXPLANATORY AND FINANCIAL MEMORANDUM**

#### **INTRODUCTION**

1. This Explanatory and Financial Memorandum has been prepared by the Department of Finance and Personnel in order to assist the reader of the Bill and to help inform debate on it. It does not form part of the Bill and has not been endorsed by the Assembly.
2. The Memorandum needs to be read in conjunction with the Bill. It is not, and is not meant to be, a comprehensive description of the Bill. So where a clause or part of a clause or Schedule does not seem to require an explanation or comment, none is given.

#### **BACKGROUND AND POLICY OBJECTIVES**

3. On 8<sup>th</sup> March 2012 the Executive agreed the introduction of major changes to public service pensions. In particular the Executive agreed to:
  - commit to the policy for a new career average revalued earnings (CARE) scheme model with pension age linked to state pension age to be adopted for general use in the public service schemes; and
  - to adopt this approach consistently for each of the different public sector pension schemes in line with their equivalent scheme in Great Britain and not to adopt different approaches for Northern Ireland.
4. The Minister of Finance and Personnel announced a proposal for a Public Service Pensions Bill in the Assembly on 26 November 2012. The Bill will give effect to the principles for pension reform agreed by the Executive. These reforms were recommended by the Independent Public Service Pension Commission in its final report published in 2011<sup>1</sup>.

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<sup>1</sup> The final report of the Independent Public Service Pensions Commission was published on 10 March 2011, [http://cdn.hm-treasury.gov.uk/hutton\\_final\\_100311.pdf](http://cdn.hm-treasury.gov.uk/hutton_final_100311.pdf)

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5. The Independent Public Service Pension Commission reported that the public service pension structure in the United Kingdom has not responded flexibly to rising costs and increases in longevity over recent decades. The final report recommended the adoption of a new pension scheme design which would address the impact of long term scheme costs for taxpayers and employers. The report also recommended a general increase in pension age across the public service schemes and, with the exception of those for the uniformed services, that public service scheme pension ages should be linked to State Pension Age.
6. The proposed Public Service Pensions Bill will have cross cutting effect for the devolved public service schemes in Northern Ireland. It provides a framework containing core provisions for pension reform which will extend across public service schemes made for the following classes of public service employments:
  - civil servants;
  - devolved judiciary;
  - local government workers;
  - teachers;
  - health service workers;
  - fire and rescue service workers; and,
  - members of the police service.
7. The powers in the Bill will supercede existing powers to create schemes for the payment of pensions and other benefits for the employments and devolved offices listed which are contained in the following legislation:
  - Superannuation (Northern Ireland) Order 1972 (Civil servants, local government workers, teachers, health service workers);
  - Fire Services (Northern Ireland) Order 1984 (continued by Article 60 of the Fire and Rescue Services (Northern Ireland) Order 2006 (Fire and rescue service workers);
  - Police (Northern Ireland) Act 1998 (Police Officers); and,
  - Judicial Pensions and Retirement Act 1993 (Devolved Judicial Offices).
8. The policy intention is for the reforms to apply to all public sector employments. The Bill will contain powers for the Department of Finance and Personnel to specify by order named public sector bodies, offices, or descriptions of bodies or offices, not captured by the categories given at paragraph 6 to which the core provisions will apply.

**CONSULTATION**

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NIA Bill [Bill Office will insert No.]-EFM      Session [Bill Office will insert session/date]

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9. The Department of Finance and Personnel is engaged in central consultation on the Bill between representatives from the Northern Ireland Ministerial Departments with responsibilities for the main public service pension schemes and a collective trades union grouping led by the Northern Ireland Committee of the Irish Congress of trade Unions which represents each of the public service employments within the Bill's remit.
10. The Department of Finance and Personnel consulted publicly from 21 January 2013 to 15 April 2013 on the policy carried in the Bill<sup>2</sup>.

**OPTIONS CONSIDERED**

11. Two policy options were considered. Firstly, to retain the existing regime for public service pension provision. The second option was to commit to the policy for a new career average revalued earnings (CARE) scheme model with pension age linked to state pension age to be adopted for general use in the public service schemes; and to adopt this approach consistently for each of the different public sector pension schemes in line with their equivalent scheme in Great Britain and not to adopt different approaches for Northern Ireland. The second approach was agreed by the Executive on 8 March 2012.
12. Two options were also considered for the legislative route to be used give effect to the Executive's policy decision of 8 March 2012. Firstly, for the agreed policy for reform to be legislated for in the Westminster Public Service Pensions Act 2013, which received Royal Assent on 25 April 2013. The second option considered was to introduce a Public Service Pensions Bill in the Assembly. On 22 November 2012 the Executive declined to request a legislative consent motion to extend the Westminster Bill and on 26 November 2013 the Minister of Finance and Personnel announced to the Assembly his intention to introduce a Public Service Pensions Bill.

**OVERVIEW**

13. The Bill consists of 37 clauses and 9 Schedules.

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<sup>2</sup> 'Consultation on proposals to Reform Public Service Pensions from April 2015' is published on the Department of Finance and Personnel website at: [www.dfpni.gov.uk/civilservicepensions-ni/policy\\_consultation\\_document](http://www.dfpni.gov.uk/civilservicepensions-ni/policy_consultation_document). The Department of Finance and Personnel published an official response to the consultation on 21 May 2013 [www.dfpni.gov.uk/civilservicepensions-ni/index/latest-news/public\\_service\\_pensions\\_bill.htm](http://www.dfpni.gov.uk/civilservicepensions-ni/index/latest-news/public_service_pensions_bill.htm)

<sup>3</sup>  
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**COMMENTARY ON CLAUSES***Establishment of new schemes****Clause 1: Schemes for persons in public service***

This clause contains the main enabling power for new public service pension schemes and schemes providing other benefits, such as injury and compensation benefits made under this Bill. The schemes are to be made in regulations, which will contain detailed provisions for the payment of pensions or other benefits. These schemes are required to be made in compliance with the framework conditions set out in the rest of the Bill. The creation of a consistent, legal framework for all public service pension schemes was a recommendation of the Independent Public Service Pensions Commission.

*Subsection (1)* enables schemes to be established which provide pensions or other benefits (such as injury and compensation benefits) to the main categories of persons in public service listed in *subsection (2)*. The definition of those main categories is further set out in Schedule 1 (to which *subsection (3)* cross-refers).

The detail of specific pension and other benefits schemes is to be set out in regulations. These regulations are called “scheme regulations”, as set out in *subsection (4)*.

***Clause 2: Responsible authority for schemes***

*Subsection (1)* enables those departments listed in Schedule 2 to make scheme regulations for the main categories of persons in public service. The department with the power to make scheme regulations for a main category of persons in public service is described in *subsection (2)* (and in the Bill as a whole) as the “responsible authority” for the scheme.

***Clause 3: Scheme regulations***

Clause 3 contains additional provisions about how the power to make scheme regulations under the Bill may be used.

By *subsection (1)*, scheme regulations can make such provision as the responsible authority considers appropriate, provided they are in accordance with the requirements in the rest of the Bill. For clauses that limit the type of provision that may be made, or which require provisions of a specific kind to be included, see for example:

- clause 4, which requires schemes to have a scheme manager who is to be responsible for managing or administering the scheme;
- clause 5, which requires schemes to provide for the establishment of a pension board to assist the scheme manager with certain matters;

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- clause 7, which requires schemes to provide for the establishment of a scheme advisory board to advise on certain matters;
- clause 8, which sets constraints on the design of schemes, including requiring schemes that are defined benefits schemes to provide those benefits through a “career average revalued earnings scheme” (or CARE scheme) or such other description of defined benefits scheme as the Department of Finance and Personnel may specify in regulations (but not a final salary scheme);
- clause 9, which provides for the revaluation of pensionable earnings of a person in a CARE scheme in accordance with changes in prices or earnings as set out in an annual order made by the Department of Finance and Personnel;
- clause 10, which contains requirements relating to the normal pension age of schemes made under this Bill; and,
- clauses 11 and 12, which require scheme regulations to contain a mechanism for regular valuations of the scheme and to provide for a cap on the costs to employers of public service schemes.

The provisions which can be made include in particular, as *subsection (2)(a)* says, any matter set out in Schedule 3. That Schedule sets out a non-exhaustive list of matters which can be included in scheme regulations for public service pension schemes. If a matter is not mentioned in Schedule 3 that does not prevent it from forming part of such a scheme provided it is within the powers given by clauses 1(1) and 3(1).

Scheme regulations may also include consequential, supplementary, incidental or transitional provisions (see *subsection (2)(b)*).

*Subsection (3)(a)* allows scheme regulations to make different provision for different cases, including different provision for different descriptions of persons. This is a common provision in regulation-making powers to ensure that they are appropriately flexible. For example, it would allow schemes to be deemed ‘connected’ (under clause 4(6)) for some purposes but not for others.

*Subsection (3)(b)* allows scheme regulations to include provisions that have retrospective effect (in relation to a period that precedes the regulations coming into force), subject to clause 23 (which sets out procedural requirements that apply to the exercise of the power to make retrospective provision). Such powers are common in public service pensions legislation. For example, it may be necessary to adjust schemes to accommodate changes in

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law or where it would not be desirable to delay the benefit of a particular change but where time is required to consider the consequences and appropriate method of making the change.

*Subsection (3)(c)* allows scheme regulations to give persons who have functions under the regulations discretion in carrying out those functions. This permits ministers or other scheme managers, for example, to make their own decisions within a framework set by scheme regulations.

*Subsection (4)* allows scheme regulations to amend primary or secondary legislation for consequential purposes. Only primary legislation passed before or within the period of 12 months from the date on which the Bill receives Royal Assent can be amended. This power may be necessary where legislation is inconsistent with or requires modification as a consequence of scheme regulations or a provision of this Bill. Clause 24(1)(a) further states that any amendment to primary legislation must be made by the affirmative procedure. The meaning of ‘affirmative procedure’ is given in clause 34.

*Subsection (5)* provides that scheme regulations made under powers in this Bill require consent of the Department of Finance and Personnel.

The Department of Finance and Personnel intends to put in place appropriate arrangements to ensure that requirements for consent under this clause, or where applicable for the administrative approval of other spending commitments, are exercised in a way that balances appropriate scrutiny with administrative efficiency.

### ***Governance***

***Clause 4: Scheme manager***

*Subsection (1)* provides that scheme regulations must provide for a person to be responsible for managing or administering a public service pension scheme set up under the powers in the Bill and any other statutory pension scheme connected with it.

That person is referred to in the Act as the “scheme manager” – see *subsection (2)*.

*Subsection (3)* provides that the scheme manager may, in particular, be the responsible authority (who, under clause 2(1), is also responsible for making the scheme regulations which create the scheme). However, the regulations may provide for some other person, or a number of persons, to be responsible for managing or administering the scheme or a part of the scheme.

*Subsection (4)* provides that regulations for injury or compensation schemes do not have to provide for a scheme manager. Such schemes are outside of the new governance arrangements which the Bill requires of public service pension schemes.

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*Subsection (5)* allows scheme regulations to provide for more than one scheme manager in that scheme and for any other statutory scheme connected with it, and for each scheme manager to be responsible for different parts of those schemes.

*Subsection (6)* explains that another statutory pension scheme is connected with a public service pension scheme set up under clause 1 if and to the extent that it provides for persons of the same description, unless the scheme regulations state that the schemes are not to be regarded as connected (see subsection (7)). For example, a public service pension scheme set up for the civil service under the Bill would be connected with any existing schemes for the civil service. The effect is that the regulations must set out the person who is to be responsible for running a new pension scheme in respect of persons set out in clause 1(2) and any connected predecessor schemes for those persons. This will allow the scheme manager to have administrative responsibility for all relevant existing pension schemes relating to the same service.

*Subsection (7)* allows for situations where an existing statutory scheme and its successor scheme are not to be managed together for some or all purposes. For example, the new civil service pension scheme is likely to make provision for persons of the same description provided for under existing public body pension schemes. However, it may be appropriate for some of those existing schemes to continue to be managed separately from the new civil service pension scheme.

The scheme manager has certain specific responsibilities under the Bill (for example, see clauses 14 and 15). Scheme managers, whether or not they are also the responsible authority, will be able to delegate aspects of their management and administration responsibilities if the scheme regulations allow (see paragraph 13 of Schedule 3).

***Clause 5: Pension board***

This clause requires public service pension schemes set up under clause 1 to establish a pension board. The board's role is to assist the scheme manager in securing the effective and efficient governance and administration of the pension scheme and any statutory scheme connected with it.

The pension board will, in particular, be charged with helping the scheme manager to ensure the scheme is operated to an appropriate standard. It will have the responsibility of assisting the scheme manager in relation to the matters set out in *subsection (3)*. These matters include ensuring that schemes are administered in accordance with all relevant legislation concerning the governance and administration of public schemes and any requirements imposed on the scheme by the Pensions Regulator. The pension board will be required to discharge these functions in relation to a public service pension scheme set up under clause 1 and any statutory pension scheme connected with it. This mirrors the provisions for scheme managers.

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For example, a pension board for a new civil service pension scheme will also be required to assist and advise the scheme manager in respect of existing civil service pension schemes.

In all cases, the scheme manager will retain ultimate responsibility for the administration and governance of the scheme. The role of the pension board is to support the scheme manager in fulfilling that responsibility and, by virtue of subsection (3)(b), in securing compliance with any requirements imposed by the Pensions Regulator. It will be for the scheme regulations and the scheme manager to determine precisely how the pension board carries out its role.

*Subsection (2)* provides that in the case of a scheme made under clause 1(2)(c) for local government workers the Local Government Officers' Superannuation Committee (NILGOSC) will be the pension board.

*Subsection (4)* provides that when making scheme regulations the responsible authority must have regard to the desirability of securing the effective and efficient governance and administration of the scheme.

*Subsections (5) and (6)* are concerned with the balance of employer/employee representatives on the pension board and with conflicts of interest. Schemes must have an equal number of persons appointed to represent employees and employers on the board. There are also likely to be other board members representing different interests. Subsections (5) and (6) prevent a person from being a member of a pension board where they have another interest that could prejudice them carrying out the role.

Under subsection (5)(a), the scheme manager (who is responsible for appointing the members of the pension board) must ensure that no conflict of interest exists at the time of appointment and while the member continues to serve. This provision would not prevent a person who is a member of the pension scheme to which the pension board relates (or a representative of members, or of employers) from being a member of the pension board.

Under subsection (5)(b), a prospective pension board member must provide adequate information to the scheme manager to establish that a conflict of interest does not exist.

Under subsection (5)(c), equal numbers of employer and member representatives must be appointed to the pension board. Each category is defined in subsection (7), which provides that employer representatives are persons appointed for the purpose of representing employers for the scheme and any connected scheme, while member representatives are persons appointed for the purpose of representing members of the scheme and any connected scheme. The provision does not mean that the pension board will necessarily consist only of these two groups. Schemes may appoint other persons to their board. For example, it is possible there could be representatives of the responsible authority and the scheme manager as well as independent board members.

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Subsection (6) explains that a conflict of interest means a financial or other interest which is likely to prejudice how a member carries out his or her duties (but not a financial or other interest arising merely from membership of the scheme or a connected scheme). This does not include other interests such as a mandate to represent the interests of scheme members or those of employers (which may be relevant but could not be said to be prejudicial).

*Subsection (9)* exempts injury and compensation schemes from the requirement to have a pension board. Such schemes are not subject to the remit of the Pensions Regulator or the legislation relating to the governance and administration of pension schemes.

***Clause 6: Pension board: information***

This clause aims to ensure that information about the pension board is available to scheme members and other interested parties, so that they can easily see and understand: who is a pension board member; how pension scheme members are represented on the pension board; and what the responsibilities of the pension board are.

***Clause 7: Scheme advisory board***

Clause 7 requires a scheme advisory board to be established in each pension scheme made under clause 1 of the Bill. Policy groups have previously been set up under administrative arrangements in the existing public service pension schemes, but this clause requires them to be written into the scheme regulations for schemes made under the powers in the Bill. The existing policy groups have been set up under administrative arrangements, but this clause requires them to be written into the scheme regulations.

The scheme advisory board is distinct from the pension board or boards established under clause 5. A pension board exists to assist in the management and administration of the scheme, whereas the scheme advisory board's role will be to advise the scheme manager on the desirability of changes to the scheme. Clauses 5 and 7 ensure a clear separation of these roles.

*Subsection (1)* provides that the scheme regulations must establish a scheme advisory board in each scheme and provides that their role is to advise the responsible authority, at the authority's request, on the desirability of changes to the scheme. The responsible authority may therefore commission the scheme advisory board to advise on any matter in relation to the scheme that the responsible authority considers appropriate. It is open to the responsible authority to set out any commission in the scheme regulations themselves or through any other means they determine. Any commission may be framed as an open request for regular advice on a range of issues, through to a narrow requirement for advice on a specific issue. It will be for each responsible authority to determine what advice the scheme advisory board is responsible for providing.

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*Subsection (2)* allows for the scheme regulations to provide a scheme advisory board with an additional role in the event that schemes will have a number of scheme managers and pension boards. The clause provides that the scheme advisory board may be given responsibility to advise them on the effective and efficient administration and management of the scheme, any connected scheme and any pension fund. It will be for the scheme regulations to determine the exact responsibilities of the scheme advisory board, if any, in these areas.

*Subsection (3)* requires the responsible authority, the scheme managers and pension boards to have regard to advice given to them by a scheme advisory board under subsection (1) or (2). This does not mean that they have to follow the advice of the board, but does mean they must consider the advice, and be able to justify taking a different approach.

*Subsections (4) and (5)* mirror the conflict of interest requirements placed on pension boards. The provision prevents persons from being a board member where they have a conflicted interest that would prevent them from undertaking the responsibilities of that position.

***Design***

***Clause 8: Types of scheme***

Clause 8 specifies the types of pension scheme that can be set up under the Bill.

*Subsection (1)* provides that the types of scheme which may be provided for in scheme regulations include defined benefits schemes, defined contributions schemes, and schemes of any other description. The meaning of defined contributions and defined benefits schemes is set out in clause 33 (general interpretation). There is therefore a broad power to create pension and benefit schemes of different designs, subject to the restrictions that the rest of the clause applies to defined benefits schemes, and to the other restrictions set out in the Bill.

*Subsection (2)* sets out that any defined benefits scheme must be either a “career average revalued earnings scheme”, or another type of defined benefits scheme specified in regulations made by the Department of Finance and Personnel.

*Subsection (3)* stipulates that final salary scheme designs may not be specified by Department of Finance and Personnel regulations. They are not a permitted form of defined benefits scheme.

*Subsection (4)* sets out the meaning of “career average revalued earnings schemes” (CARE schemes) for schemes made under clause 1. In this type of scheme, members build up pension in each year of active membership based on their pensionable earnings in that year. The pension accrued in that way is then revalued each year until the person leaves pensionable service. The measure of revaluation varies from scheme to scheme and will be provided for in scheme regulations, subject to the arrangements in clause 9 (revaluation).

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*Subsection* (provides that regulations under this clause are subject to negative resolution of the Assembly, which is defined in Section 41(6) of the Interpretation Act (Northern Ireland) 1954.

***Clause 9: Revaluation***

Clause 9 deals with the procedure for revaluing the earnings of active members of pension schemes made under clause 1, where those earnings (or a proportion of those earnings) are used to accrue pension benefits. It is concerned with the revaluation of the accrued pension of active members of schemes and not the uprating or indexation of pensions that are deferred or in payment (for this see the Pensions (Increase) Act (Northern Ireland) 1971, and the consequential amendments in Schedule 8 to this Bill).

By *subsection (1)*, clause 9 applies to schemes made under clause 1 of the Bill where scheme regulations provide for the pensions of members of those schemes to be revalued (until those members leave pensionable service of that scheme) by reference to changes in prices or earnings over a period specified in the regulations. This will apply to all CARE schemes and, it is envisaged, the vast majority of pension schemes created under the powers in the Bill.

*Subsection (2)* provides for the Department of Finance and Personnel to make orders which specify the percentage increase or decrease in prices or earnings for the purposes of the revaluation. It ensures that the measures of prices and earnings are used and applied on a consistent basis for revaluation across public service pension schemes.

*Subsection (3)* sets out that the Department of Finance and Personnel may determine the change in prices or earnings, by reference to the general level of prices or earnings, which is to be estimated by the Department of Finance and Personnel in a manner that it considers to be appropriate.

*Subsection (4)* states that an order under this clause must be made annually and may make different provision for different purposes. This is to allow some flexibility to give effect to different agreements on revaluation made with representatives of members of different schemes. For example, the agreed scheme design for firefighters could include revaluation of accruals by reference to the general change in earnings, whereas the agreed scheme design for civil servants could include revaluation of accruals by reference to the general change in prices.

*Subsection (5)* sets out the procedure for Department of Finance and Personnel orders under this section. In cases where the order specifies a percentage decrease (which could happen where changes in prices or earnings are negative) it is subject to the affirmative Assembly procedure (as defined in clause 34). In all other cases, the order is subject to the negative procedure.

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*Subsection (6)* disregards any gap in a person's pensionable service of up to five years for the purposes of subsection (1), so accruals are revalued during the gap as if the person were an active member. This is to allow those persons who have taken a break from pensionable service of less than five years to be treated, for pension purposes, as if they had remained in pensionable service in the scheme. It relates only to the revaluation of benefits already accrued in the scheme and does not give pensionable rights in relation to the years not served in public service.

***Clause 10: Pension age***

This clause provides for the normal pension age and deferred pension age of members of most public service pension schemes to be the same as their state pension age, or 65, whichever is greater.

*Subsection (1)* requires a scheme made under the powers in clause 1 to make the normal pension age for members of that scheme the same as their state pension age, or 65, whichever is greater. The floor of age 65 is to account for the gender disparity in state pension ages at present, which is due to be equalised at 65 by 2018. "Normal pension age" is defined in *subsection (5)(a)* as the earliest age at which a member of the scheme is entitled to receive unreduced benefits upon retirement from active membership. "State pension age" is defined in *subsection (5)(c)* by reference to a person's pensionable age as set out in Schedule 5 to the Pensions (Northern Ireland) Order 1995.

*Subsection (2)* excepts fire and rescue workers who are firefighters or members of police forces from the requirement to link normal pension age to state pension age in subsection (1). It provides that their normal pension age should be 60. These groups historically have lower pension ages than other public servants in recognition of the unique characteristics of the work they do.

*Subsection (3)* requires a scheme made under clause 1 to make the deferred pension age for members of that scheme the same as their state pension age, or 65, whichever is greater. Again, the floor of age 65 is to account for the gender disparity in state pension ages at present. "Deferred pension age" is defined in subsection (5)(b) as the earliest age at which a member of a scheme is entitled to receive unreduced benefits under the scheme after leaving active service before reaching normal pension age.

*Subsection (4)* requires any changes to normal or deferred pension age which occur as a result of a change in state pension age to apply to the calculation and payment of all benefits earned in a scheme to which that pension age is relevant. This includes benefits accrued in that scheme before the change in state pension age.

This clause also applies to new schemes set up for other public bodies (see clause 30(1) (new public body pension schemes)).

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The effect of this clause is to require normal and deferred pension ages in schemes made under powers in the Bill, or governed by provisions in it, to change in line with any change to state pension age. So, where state pension age increases by one year the relevant normal and deferred pension ages would need to increase by one year. The increase would apply to all relevant benefits earned in a scheme set up under the Bill where the normal and deferred pension age have been linked to state pension age. This will mean that if the state pension age changes, an active member of a scheme set up under the power in clause 1 will take their entire relevant pension entitlements in that scheme at the new normal pension age, including those earned before the change to state pension age. It will not affect pension benefits that were accrued before the scheme member transferred into the public service pension scheme set up under or governed by the Bill. Those pension benefits may be taken at the normal pension age for the scheme in which they were accrued, and on the terms that apply to that scheme.

***Cost Control***

***Clause 11: Valuations***

This clause sets out that defined benefits schemes made under clause 1 must be actuarially valued in accordance with Department of Finance and Personnel directions.

*Subsection (1)* requires scheme regulations to provide for actuarial valuations that will cover both defined benefits pension schemes that are created by, or governed by, the Bill and any connected scheme. clause 4(6) defines a connected scheme as one which covers employees who are employed in the same kind of public service as the new scheme, provided they are not excepted from this rule under scheme regulations.

*Subsections (2) and (3)* set out that the valuations must be carried out in accordance with Department of Finance and Personnel directions. Those directions may specify key details on how valuations should be carried out, including:

- how and when the valuation is to be carried out;
- the time periods over which a valuation will measure a scheme's assets and liabilities;
- the data, methodology and assumptions to be used in valuations;
- the matters that must be covered by the valuations (which may relate to the outputs that must be produced);

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- how valuations of new and connected schemes will be combined, where they are to be valued together; and
- the time period for implementing changes to the employer contribution rate as a result of the outputs of the valuation.

*Subsection (4)* requires the Department of Finance and Personnel to consult the Government Actuary before making, revoking, or amending directions.

*Subsection (5)* provides that scheme regulations for other kinds of schemes, such as injury and compensation schemes, may provide for actuarial valuations of that scheme and any connected scheme. This will allow for those schemes to be valued alongside a pension scheme if this is appropriate.

***Clause 12: Employer cost cap***

This clause requires scheme regulations for defined benefits schemes made under clause 1 to set an employer cost cap and sets out how this cap should be set, measured and operated. The clause does not apply to defined contributions schemes, or injury and compensation benefit schemes, as these schemes do not require this type of cost control.

*Subsections (1) and (2)* require scheme regulations to set a rate, known as the employer cost cap, which is to be used for measuring the costs of a scheme made under clause 1 and, subject to Department of Finance and Personnel directions made under this section, those of any connected schemes as defined in clause 4(6).

*Subsection (3)* provides that the cap is to be set in accordance with Department of Finance and Personnel directions.

*Subsection (4)* gives non-exhaustive examples of what those Department of Finance and Personnel directions may cover. They may, in particular, specify how the first valuation under clause 11 will be taken into account when setting the cap, and how costs or changes in costs at subsequent valuations are to be taken into account when measuring the costs of the scheme against the employer cost cap (the comparison that will be made at subsequent valuations).

The directions may also specify to what extent the costs of connected or other schemes are to be taken into account when setting the employer cost cap.

*Subsection (5)* requires the Department of Finance and Personnel to make regulations to determine how the cap will operate. Department of Finance and Personnel regulations will:

- set margins either side of the cost cap; and

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- specify the target cost (within those margins) that the scheme should take action to return costs to if the costs of the scheme go beyond those margins.

*Subsection (6)* makes provision for scheme regulations to specify the processes to be followed to reach agreement on the action to be taken if the cost of the scheme arising from a second or subsequent valuation does not fall within the margins set out in Department of Finance and Personnel regulations. A default action may also be specified if there is no agreement.

*Subsection (7)* provides that the action taken to bring the scheme costs within the margins may include an increase or decrease in members' benefits or contributions. It is not envisaged that such action will affect any pension already built up in the scheme.

*Subsection (8)* allows Department of Finance and Personnel regulations to make consequential and supplementary provision. It also allows regulations to make different provision for different schemes with regard to the way the employer cost cap is set, measured and operated.

*Subsection (9)* provides that Department of Finance and Personnel regulations under this section are subject to the negative procedure in the Assembly.

***Clause 13: Employer contributions in funded schemes***

Clause 13 provides for the setting of the rate of employer contributions in defined benefits schemes with a pension fund, most notably the funded Local Government Pension Scheme (Northern Ireland). The clause requires an actuarial valuation of the pension fund to inform the setting of the employer contribution rate. The valuation of the pension fund is separate from and in addition to the valuation of the whole scheme under clause 11. Clause 13 provides for an independent review of the valuation and employer contribution rates to check that they are appropriate and requires remedial action to be taken where that review identifies a problem.

*Subsection (1)* provides that the pension schemes to which the clause applies are defined benefits schemes set up under the Bill which have a pension fund. These will be the Local Government Pension Scheme and any other funded defined benefits schemes established under clause 1 in the future.

*Subsection (2)* requires the scheme regulations of a funded scheme made under clause 1 to set the employer contribution rates so that they meet two specified objectives. These objectives are to ensure that the rates of employer contributions are set at a level that is sufficient to ensure the solvency of the pension fund and the long-term cost-efficiency of the part of the scheme to which that fund relates. The valuation will take into account the current and

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anticipated liabilities of the scheme; the effect of these objectives is to ensure that those liabilities are provided for in a prudent manner.

The terms “long-term cost-efficiency” and “solvency” are not defined in the Bill. Long-term cost-efficiency implies that the rate must not be set at a level that gives rise to additional costs. For example, deferring costs to the future would be likely to result in those costs being greater overall than if they were provided for at the time. Solvency means that the rate should be set at such a level as to ensure that the scheme’s liabilities can be met as they arise.

*Subsection (3)* provides that scheme regulations must require the pension fund to be subject to actuarial valuation. Provisions in the scheme regulations will require the scheme actuary to set the employer contribution rate for the pension fund.

*Subsections (4), (5), and (7)* require an appropriately qualified person to be appointed by the responsible authority to review the actuarial valuation and employer contributions rates and publish the findings of that review. The review will consider whether the valuation is in compliance with the scheme regulations, whether it is consistent with other valuations under the scheme, and whether the employer contributions rates were set as required by subsection (2).

The purpose of the review is to provide an independent verification of the assessment of the scheme’s assets and liabilities and to confirm whether appropriate employer contributions will be paid to meet those liabilities. The independent person’s report must be published (subsection (5)).

*Subsection (6)(a)* provides that where the review identifies a problem with the valuation or the employer contribution rates the independent person may recommend how these can be corrected. Regardless of whether or not the review recommends actions, the scheme manager of the scheme is required by *subsection (6)(b)* to take steps to remedy any problem identified by the review. The scheme manager is also required to set out publicly what actions have been taken and why.

Where there has been an adverse review, *subsection (6)(c)* provides that the responsible authority may require the scheme manager to report on progress in taking remedial steps. The responsible authority may also direct the scheme manager to take such steps as he or she considers are needed to correct the problem. These powers are expected to be used as a last resort; for example, where the scheme manager is not (in the opinion of the responsible authority) taking appropriate remedial steps, or is delaying doing so.

***Clause 14: Information about benefits***

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Clause 14 provides for scheme regulations to require scheme managers (for defined benefit schemes under clause 1) to provide active pension scheme members with benefit information statements in accordance with the requirements of this clause.

*Subsection (2)* sets out the matters that must be included in benefit information statements. Such statements would need to include details of the pension benefits that the person had earned in the scheme and any other information specified in a Department of Finance and Personnel direction.

*Subsections (2)(b), (3) and (6)* provide for Department of Finance and Personnel directions to specify requirements as to the information to be included, how that information is presented, and how that information is to be provided. The purpose of these directions is to ensure members of all pension schemes are provided with clear and comprehensive information to enable them to understand their pension benefits.

*Subsections (4) and (5)* set out when such statements must be provided.

Under clause 17 and Schedule 4 to the Bill the Pensions Regulator has a role in overseeing the provision of benefit information statements. Benefit information statements are listed under paragraph 14 of Schedule 4 as a matter on which the Regulator must issue a code of practice. Additionally, they are also matters on which the Regulator can take enforcement action should schemes fail to comply with their duties.

This clause also applies to new schemes set up for other public bodies (see clause 30(1) (new public body pension schemes)).

***Clause 15: Information about schemes***

Clause 15 is concerned with the collection and publication of information about schemes under clause 1. It allows the Department of Finance and Personnel to direct schemes to publish information or to provide information to the Department of Finance and Personnel, and to specify how and when that information is to be published or produced.

The purpose of this clause is to improve the transparency of public service pension schemes. It is intended to be used to ensure that information is publicly available to allow comparisons to be made across schemes on: their financial position; costs to members and other taxpayers; their assets and liabilities (including how those are managed); membership demographics; and administration and governance standards. It is intended to allow for matters such as the format, methodology and data to be included in published information to be set centrally and applied consistently across all of the public service schemes governed by the Bill. This is intended to ensure that information is produced to common standards and timing, which will make it easier to compare public service pension scheme information and for members and taxpayers to hold schemes to account.

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Responsible authorities will continue to be able to publish information independently. This clause is also intended to allow the Department of Finance and Personnel to collect centrally all of the information it requires to carry out its functions under the Bill; for example, the setting of valuations methodologies under clause 11.

*Subsection (1)* allows the Department of Finance and Personnel to direct scheme managers or a responsible authority to publish information themselves or to provide it to the Department of Finance and Personnel. Information provided to the Department of Finance and Personnel may be collated and published centrally.

*Subsection (2)* explains that the information referred to in subsection (1) relates to information about the scheme itself and other statutory schemes that are connected with it.

*Subsection (3)* gives example of the types of information which schemes may be directed to publish or provide. It includes, for example, scheme accounts and information about scheme membership.

*Subsection (4)* provides that a Department of Finance and Personnel direction may specify how and when information is to be published or provided.

*Subsection (5)* stipulates that a Department of Finance and Personnel direction cannot require schemes to publish or provide information that could not otherwise be lawfully provided. This protection means that schemes cannot be required to publish or provide information in breach of data protection obligations or the laws which govern the confidentiality of an individual's tax and social security affairs.

***Clause 16: Records***

Clause 16 allows the Department for Social Development to make regulations requiring scheme managers of pension schemes made under clause 1 (and any connected schemes) to keep specified records. This will include, for example, information about contributions due to the scheme. The regulations may also cover new public body schemes (and any connected schemes) by virtue of the application of clause 16 to such schemes by clause 30. Regulations under this clause are subject to the negative procedure.

***Clause 17: Regulatory oversight***

Clause 17 makes provision about the regulatory responsibility of the Pensions Regulator, established under the Pensions (Northern Ireland) Order 2005, in relation to the governance and administration of public service schemes made under the Bill, connected schemes and other public service pension schemes (including, for example, certain existing public service schemes listed in Schedule 5 and new public body schemes which may be created after April 2015).

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This Memorandum refers to the Public Service Pensions Bill, (Northern Ireland) as introduced in the Northern Ireland Assembly on [Bill Office will insert date], (Bill [Bill Office will insert No.] 2000)

*Subsection (1)* introduces Schedule 4, which amends the 2005 Order to extend the Pensions Regulator's role in respect of those schemes.

*Subsection (2)* provides a power for the Department for Social Development by order to make provision consequential on the amendments set out in Schedule 4 and to make further or connected provision for the regulation of public service pension schemes within the meaning of the Pensions (Northern Ireland) Order 2005.

*Subsection (3)* provides that the power at subsection (2) includes a power to amend primary legislation (including this Bill).

*Subsection (4)* allows for an order under this clause to make different provision for different purposes, enabling the correct level of regulatory oversight to be applied in each individual circumstance, if required.

*Subsection (5)* provides that where such an order makes amendments to primary legislation, it will be subject to the confirmatory procedure. This means it must:

- be laid before the Assembly after being made; and
- takes effect on such date as may be specified in the order, but ceases to have effect upon the expiration of a period of 6 months from that date unless at some time before the expiration of that period the order is approved by a resolution of the Assembly.

***Transitional***

***Clause 18: Restriction of existing pension schemes***

Clause 18 provides that benefits may not be provided under existing pension schemes in relation to service after the closing date for the scheme. Its effect is to bring to an end further accrual of pension benefits in existing schemes, except where transitional arrangements have been agreed to allow those who are closest to retirement to continue to accrue benefits under the scheme. The transitional arrangements for each scheme may vary within the parameters set by the Bill.

*Subsection (1)* prohibits the provision of benefits under an existing scheme for service after the closing date for that scheme, as provided by subsection (4). Subsection (1) does not require the scheme to be wound up, and will not crystallise the liabilities in that scheme.

*Subsection (2)* specifies that "existing schemes" for the purposes of the Bill are those listed in Schedule 5.

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*Subsection (3)* provides that the above restriction does not apply to defined contribution schemes or to the benefits specifically excepted by Schedule 5, which are injury and compensation benefits.

*Subsection (4)* sets out that the closing date mentioned in subsection (1) is 31st March 2015 or, in the case of the Local Government Pension Scheme 31<sup>st</sup> March 2014. The Department of the Environment to bring regulations for its reformed scheme into force one year earlier than the other major public service schemes.

*Subsection (5)* permits scheme regulations to provide exceptions to subsection (1) for:

- persons who were, or were eligible to be, members of an existing scheme immediately before 1st April 2012; and
- for other persons who ceased to be, or to be eligible to be, members of existing schemes before that date.

This provision is permissive, but not mandatory; schemes may decide not to adopt transitional arrangements if they wish. It is anticipated that schemes will, in practice, provide transitional protections.

Such exceptions may, by *subsection (6)*, be framed in particular by reference to a person reaching normal pension age under their existing scheme, or another age, or to the satisfaction of another condition before a particular date. These exceptions are to permit the various transitional arrangements that have been agreed as part of developing reformed public service pension schemes, and to enable delivery of the new Fair Deal policy (to which clause 29 and Schedule 9 are also relevant).

*Subsection (7)* allows for additional transitional provisions for those who do not fall within the categories that scheme regulations provide under subsection (6). These provisions may extend qualified transitional arrangements for up to a further four years. This subsection allows the impact of reformed schemes to be moderated for those who fall just outside of the main categories for which transitional protection has been agreed. This is typically people who are between 10 and 14 years from retirement in their existing schemes. These ‘tapering’ provisions are designed to afford protection to those scheme members who do not benefit from full exemption under transitional agreements.

*Subsection (8)* allows the arrangements under subsections (5) and (7) to be provided by amending existing schemes through scheme regulations.

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*Subsection (9)* clarifies that death in service benefits are included within the reference to “benefits” in subsection (1).

***Clause 19: Closure of existing injury and compensation schemes***

Clause 19 deals with existing injury and compensation schemes. *Subsection (1)* permits scheme regulations to provide for the closure or restriction of existing schemes that provide for the payment of benefits relating to compensation for loss of office and for injury benefits, as listed in Schedule 6. The Bill does not set a date or require a date to be set for the closure of these injury and compensation schemes.

The schemes listed in Schedule 6 relate to employment in the civil service, fire service, local government, health service, the police and teaching. These injury benefit and compensation schemes are for the most part separate from the pension schemes for those workforces and their membership is not restricted to persons who are members of those pension schemes.

Clause 1 provides powers for schemes to be made in relation to those workforces in the future (see clause 1 and paragraph 2 of Schedule 3); replacement schemes can be set up in the event that the powers in subsection (1) are used.

*Subsection (3)* provides for schemes to make exceptions to subsection (1). This power could be used to allow for transitional provisions for current members.

*Subsection (4)* provides that closure or restriction may be achieved by amending the existing schemes using scheme regulations made under the Bill.

***Clause 20: Final salary link***

This clause introduces Schedule 7, which sets out the final salary link that applies to past service in those final salary schemes restricted under clause 18.

***Procedure for scheme regulations***

***Clause 21: Consultation***

Clause 21 obliges the responsible authority to consult those likely to be affected before making or changing scheme regulations. The current procedures for making changes to current public service pension schemes vary from scheme to scheme. The clause provides a standard requirement for those responsible for making schemes to consult before doing so.

*Subsection (1)* requires the responsible authority to consult the persons (or their representatives) who it considers are likely to be affected by the proposed change before any change is made.

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*Subsection (2)* requires the responsible authority to publish a list of those people and organisations that the authority anticipates would normally be consulted as part of the obligation under subsection (1). This list must be kept up to date. The purpose of the list is to make the consultation process more transparent by providing an indication of the organisations and people with whom consultations within a particular scheme are likely to be conducted.

*Subsection (3)* allows any consultation that took place before the commencement of this clause to satisfy the requirements of subsection (1). It is a permissive rather than mandatory provision. It means that schemes do not need to wait until this clause is brought into force before they consult on making scheme regulations, because a consultation carried out before the clause comes into force will satisfy its requirements (provided it is compliant in all other respects).

***Clause 22: Procedure for protected elements***

The policy intention is that the reforms legislated for under this Bill are designed to last for at least 25 years. This clause specifies enhanced consultation and report procedures for changes to protected elements of a scheme for a period of 25 years. The clause is designed to ensure a high hurdle is set for future proposals to change the design of the schemes.

*Subsection (1)* sets out that the process in subsections (2) to (4) is to be followed in the event that the responsible authority wishes to make changes to the new public service pension schemes that impact on certain elements (the “protected elements”) which have been identified for enhanced protection. Those elements are protected from modification until 31<sup>st</sup> March 2040 (the “protected period”) unless the process is followed. “Protected elements” and “protected period” are defined in *subsection (5)*.

*Subsections (2) to (4)* set out the two parts of the required process. Where a change is proposed to the protected elements during the protected period, the responsible authority must consult those who appear likely to be affected with a view to reaching agreement with them and must lay a report before the Assembly. The requirement to consult with a view to reaching agreement is a higher standard than applies under clause 21.

The responsible authority proposing the change must consult those who appear likely to be affected, either directly or through their representatives (*subsection (3)*).

*Subsection (4)* provides that the report to the Assembly must say why a modification to a protected element is proposed within the protected period, having regard to the general desirability of not making such changes in that period.

*Subsection (6)* creates an exception for changes to the protected elements that are caused by the operation of the employer cost cap under clause 12 (see clause 12(6), which envisages

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consultation resulting in an agreement to implement such changes, unless agreement cannot be reached and a default change is applied). *Subsection (7)* provides that where clause 22 applies, there is no requirement to consult under clause 21 (this is to prevent duplication of the requirement to consult set out in that clause).

***Clause 23: Procedure for retrospective provision***

Clause 23 provides a procedure to be followed when retrospective provisions are included within scheme regulations proposed by the relevant authority.

*Subsection (1)* provides that where such retrospective provisions appear to the responsible authority to have significant adverse effects in relation to the pension payable to or in respect of members of the scheme, the authority must first obtain the consent of those who appear likely to be affected, either directly or through their representatives (*subsection (3)*).

*Subsection (2)* provides that where the retrospective provisions appear to the responsible authority to have significant adverse effects in any way not covered by subsection (1) in relation to the members of the scheme (for example, a serious adverse effect on injury benefits as opposed to pension benefits), the authority must first consult those who appear likely to be affected, either directly or through their representatives, with a view to reaching agreement.

*Subsection (4)* requires that where subsection (1) or (2) applies the responsible authority must lay a report before the Assembly (as defined in clause 22(5)).

*Subsection (5)* provides that where this clause applies, there is no requirement to consult under clause 21 (this is to prevent duplication of the requirement to consult). The requirement for consent and to consult with a view to reaching agreement is a higher standard than applies under clause 21.

***Clause 24: Other procedure***

Clause 24 sets out the legislative procedures which apply to the making of scheme regulations. A higher level of Assembly scrutiny is required in each case if scheme regulations are used to amend primary legislation or to make retrospective amendments that appear to the responsible authority to have significant adverse effects in relation to members of schemes.

*Subsection (1)* provides that scheme regulations are subject to the affirmative procedure if they amend primary legislation; make retrospective provision that may adversely affect members of schemes to a significant extent; or are scheme regulations relating to the judiciary (unless the pension board for the judiciary scheme has stated that it considers the regulations to be minor or beneficial).

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*Subsection (2)* provides that in all other cases scheme regulations are subject to the negative procedure.

*Subsection (3)* provides that when scheme regulations subject to the negative procedure are combined with regulations subject to the affirmative procedure, the combined regulations are subject to the affirmative procedure.

*New schemes: supplementary****Clause 25: Extension of schemes***

This clause allows schemes made under clause 1 to be extended to persons who are not in the main categories of persons in public service specified there. This is similar to the process where public servants who are not civil servants are admitted to the Principal Civil Service Pension Scheme (Northern Ireland) by inclusion within Schedule 1 of the Superannuation (Northern Ireland) Order 1972. However, this clause is designed to provide a more streamlined and transparent process that can be widely applied across all public service workers.

*Subsection (1)* enables scheme regulations to make provision for pension and other benefits to public service workers who fall within one of the core descriptions of public service workers set out in clause 1 and Schedule 1, but for whom the responsible authority for that scheme could not otherwise make a scheme. This is to enable schemes to extend access, if appropriate, to other core public service workers.

*Subsection (2)* allows scheme regulations to deem persons to fall within a given description of persons in public service where they do not fall within that description. This enables scheme regulations to extend the scheme to persons of any description including those within the core description of public service workers, other public service workers and other workers generally.

*Subsection (3)* permits scheme regulations to specify persons who, though not specified in clause 1(2), may potentially be covered by a scheme made under clause 1. This is to enable scheme regulations to make provision for pension and other benefits to public service and other workers who do not fall within the core descriptions of public service workers. They are potentially covered by a scheme because the further step set out in *subsection (5)* is needed to make the scheme actually relate to some or all of these persons.

*Subsection (4)* gives discretion to the responsible authority to specify under subsection (3) any persons not in the core description of public service workers whom it considers appropriate.

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*Subsection (5)* allows the responsible authority to determine which of the persons who have been specified in scheme regulations under subsection (3) are to be covered by the scheme. This gives the responsible authority the ability to admit some or all of a class of specified persons.

The eligibility of those who are not in the core description of public service workers to join a scheme under this clause is, therefore, a two-stage process. First, the persons whom the scheme may cover must be specified in the scheme regulations (that is likely to be done by a generic description). Then, the responsible authority must determine which of those persons are permitted to be members of the scheme. As subsection (5) says, the determination may cover some or all of the specified group.

*Subsection (7)* notes that *subsection (6)*, which applies the terms of the scheme to all workers to whom it is extended by a determination under subsection (5), is subject to any special provisions in the scheme regulations and to a direction made by the responsible authority under subsection (8) for such persons.

Subsection (8) allows for the scheme regulations to provide the responsible authority with powers to make a direction administratively modifying the application of the scheme to persons admitted to the scheme under subsection (2) or (3). The use of such directions must be in accordance with the objectives set out in paragraphs (a) to (c) of subsection (8). This mirrors current procedure in some public service schemes and enables them to extend membership while retaining the flexibility necessary to adapt that extension to any special circumstances.

*Subsection (9)* requires the responsible authority to publish a list of the persons for whom a determination has been made under subsection (5). The list provides a comprehensive and up to date record of the non-public service membership of the relevant scheme. This list must be kept up to date.

*Subsection (10)* allows determinations under subsection (5) to have retrospective effect. This means that the eligibility of persons to join the scheme can be backdated so that it takes effect from a date before the date of the determination. For example, if it is decided in 2016 that a group of persons may enter a scheme, but the scheme regulations are updated later in 2017, it will be possible to admit them with effect from 2016 when the decision was made. Article 1 of the Superannuation (Northern Ireland) Order 1972 contains a similar power to allow the membership of the Principal Civil Service Pension Scheme (Northern Ireland) to be extended with retrospective effect, which is used in similar circumstances.

*Subsection (11)* provides the responsible authority the ability to delegate its powers under subsections (5) to (9) to scheme managers in schemes under clause 1. This delegation will be subject to any conditions imposed by the responsible authority.

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Between them, clause 1(2) and clause 25 determine the scope of schemes made under this part. Clause 25 is expected to be used more by so-called “mixed” public service schemes, which have traditionally included members from a wide range of employers (such as the civil service and the local government scheme). It is less likely to be used by schemes that draw their membership from a narrower range of employers or occupations such as the police or firefighters’ schemes.

***Clause 26: Non-scheme benefits***

This clause allows scheme managers and employers to make payments towards the provision of pensions and other benefits that are not delivered through a scheme made under clause 1 for persons who could have access to such schemes (specifically, both the class of persons described under clause 1(2) and persons to whom a scheme has been extended under clause 25). This will enable employers to contribute to private occupational pension schemes where: members of public service schemes wish to take out or retain private occupational pensions in addition to (or instead of) being members of public service schemes (such as the Northern Ireland Civil Service Partnership Scheme).

*Subsection (2)* makes the use of powers in clause 26 subject to any provisions contained in the scheme regulations. This would allow each scheme to limit or modify how the power to make payments outside the scheme for pensions or other benefits may be used.

***Clause 27: Consequential and minor amendments***

This clause introduces Schedule 8, which contains consequential and minor amendments to primary legislation that are required because of the provisions in the Bill. These include amendments to existing scheme legislation, as well as provisions in wider pension legislation to allow the Bill to operate properly.

***Existing schemes: supplementary******Clause 28: Existing local government schemes***

Clause 28 provides for certain regulations made under Article 9 of the Superannuation (Northern Ireland) Order 1972 have effect as if they were scheme regulations made under clause 1 of the Bill. This clause will only apply to regulations under which benefits are provided to or in respect of service on or after 1st April 2014. It will only apply to regulations that provide for pension benefits in respect of service on or after that date. The clause provides that such regulations have effect as if they were scheme regulations for local government workers to the extent that they could have been made under the Bill.

It is intended that reforms to the Local Government Pension Scheme which is made under Article 9 of the 1972 Order, will be brought into force one year earlier than the other major public service schemes. As it is a funded scheme, this will enable the Department of

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Environment to bring forward savings from reform earlier so that they will be available for other purposes. By allowing these regulations to have effect as if made under clause 1, the scheme will be able to introduce reforms on their chosen timetable while still being able to take advantage of the full powers of the Bill and the protections included in it.

***Clause 29: Existing schemes for civil servants: extension of access***

This clause introduces Schedule 9, which amends the Superannuation (Northern Ireland) Order 1972 to extend access to schemes made under Article 3 of that Order.

***Public body pension schemes***

***Clause 30: New public body pension schemes***

There are defined benefits pension schemes for those in public service aside from the main schemes for civil servants, local government workers, health service workers, teachers, police, fire and rescue services, and devolved judiciary.

These are pension schemes run for the staff and office holders of non-departmental public bodies, non-ministerial departments, arms length bodies and similar bodies and offices ('public bodies').

Where it is not possible or appropriate for these schemes to be reformed by moving the staff and office holders into one of the new schemes established under clause 1 of the Bill public bodies may be allowed to reform their current schemes or to set up new bespoke pension schemes along reformed lines. This clause deals with the latter situation.

The clause imposes constraints on the design of new pension schemes that may be created under the power in clause 31 for those bodies and offices whose pension schemes are restricted for future accrual and whose members cannot join one of the schemes established under clause 1. It also governs the design of pension schemes that are set up in the future or established under future legislation for public bodies (unless future legislation makes specific, different provision).

*Subsection (1)* identifies the provisions of the Bill which apply to new public body pension schemes. These provisions ensure that such schemes contain the same core design, cost control and governance features of the schemes established under clause 1.

Subject to that, the rules of such schemes can make such provision as the public authority establishing the scheme considers appropriate, because clause 3(1) is applied to them by this subsection.

*Subsection (2)* clarifies that where the provisions identified in *Subsection (1)* apply to a new public body scheme references to scheme regulations in those provisions are to be read as

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references to the rules of the scheme; and references to the responsible authority are to be read as references to the public authority which established the scheme.

*Subsection (3)* requires the Department of Finance and Personnel to consent to the establishment of a new public body pension scheme after this clause is commenced, or the subsequent variation of the rules of such a scheme.

*Subsection (4)* sets out the meaning of ‘public body pension scheme’ and ‘new public body pension scheme’.

***Clause 31: Restriction of certain existing public body pension schemes***

Clause 31 contains provision for the Department of Finance and Personnel to specify public bodies whose pension schemes would be restricted and so that no benefits are provided under the scheme to or in respect of a person in relation to their service in the schemes after a date to be specified.

*Subsection (1)* provides powers for the Department to specify by order named bodies, offices, or descriptions of bodies or offices, to which the clause would apply.

*Subsection (2)* places a duty on the public authority which is responsible for such a scheme to close the scheme for future service after a date determined by the authority.

*Subsection (3)* sets out that subsection (2) does not apply to defined contributions schemes or injury and compensation schemes. The obligation to secure that no further benefits are accrued beyond the date set will only apply to defined benefits schemes.

*Subsection (4)* allows pension schemes which are required to be closed under subsection (2) to continue to provide benefits by way of exception for certain members who are eligible for transitional protection. Where transitional protection is offered, it is expected to be offered on the same basis and timing as transitional protection in the schemes that are closed to future accruals under clause 18. This will mean that the transitional protection is expected to be based upon a starting date of 1st April 2012, rather than any later date, despite the later progress of reform to public body pension schemes. Subsections (6) and (7) of clause 18 will apply to transitional arrangements in the public body schemes closed to future accruals.

*Subsection (5)* allows for the obligation to prevent future accrual of rights in public body defined benefit schemes, and exceptions to that, to be achieved by amending existing public body defined benefit schemes.

*Subsection (6)* explicitly sets out that subsection (2) also applies to death in service benefits.

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*Subsection (7)* allows the public authorities responsible for a public body scheme to establish new pension schemes for staff or office-holders where it is not possible for those persons to become members of one of the major schemes established under clause 1. Clause 30 provides details of the types of scheme that may be established in such cases.

*Subsection (8)* prevents a public authority which closes a scheme in accordance with subsection (2) from exercising any existing statutory function or other power so as to establish a new defined benefits scheme. Its purpose is to ensure that replacement schemes will only be made using the power in subsection (7).

*Subsection (9)* provides that where an existing public body scheme was established by trust deed, subsections (2) and (4) supersede any conflicting provision of the deed or of the law relating to trusts.

*Subsection (10)* provides that an order made by the Department of Finance and Personnel under subsection (1) may also make consequential and supplementary provision, including amendments to legislation.

*Subsection (11)* provides that an order made by the Department of Finance and Personnel under subsection (1) is subject to the negative procedure.

*Subsection (12)* allows subsection (1) to be used to close to future accrual schemes made before or after clause 31 comes into force.

*Subsection (13)* indicates that the provisions of Schedule 7, which provides for a “final salary link”, apply for the benefit of members of public body schemes restricted under this clause.

***Clause 32: Existing public body pension schemes: pension age***

This clause allows an existing public body pension scheme to reform itself by including a provision that the normal pension age and deferred pension age of members of those schemes is to be the same as their state pension age (*subsection (1)(a)*). The link may only apply to benefits accrued under the scheme after the provision to establish that link took effect.

*Subsection (1)(b)* allows any changes to normal or deferred pension age that occur as a result of a change in state pension age to apply to the calculation and payment of all benefits earned in a scheme; including, as set out in *subsection (2)*, benefits accrued after the creation of the link but before the relevant change in state pension age.

The effect of this clause is to allow existing public body pension schemes to include a provision to link normal and deferred pension ages, so they change in line with any change to state pension age. If state pension age increases by one year, the normal and deferred pension

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ages would automatically increase by one year, and the increase would apply to all benefits earned in the scheme from the point at which the link to state pension age was created.

***General******Clause 34: Regulations, orders and directions***

This clause sets out the meaning of “affirmative procedure”. *Subsection (2)* provides that directions given under the Bill by the Department of Finance and Personnel may be varied or revoked.

***Final******Clause 36: Commencement***

This clause provides when and how the provisions of the Bill are to come into force. The provisions listed in *subsection (1)* come into force automatically on the day the Bill is enacted. They include the provisions to extend access to the existing Principal Civil Service Pension Scheme (Northern Ireland) in clause 29 and Schedule 9;

By *subsection (2)*, the remaining provisions are to be brought into force on such day or days as appointed by the Department of Finance and Personnel in an order. By *subsection (3)* such an order may appoint different days for different purposes, and may make provisions with transitional, transitory or saving effect.

***Schedule 1: Persons in public service: definitions***

Schedule 1 contains definitions of the persons in public service listed in clause 1(2) for whom schemes may be made under clause 1.

***Schedule 2: Responsible authorities***

This Schedule lists the Northern Ireland Ministerial Departments which may exercise the power under clause 1 to make scheme regulations for the main categories of persons in public service set out in that clause.

***Schedule 3: Scope of scheme regulations: supplementary matters***

This Schedule contains a list of the type of provision that may, in particular, be included in scheme regulations made under clause 1. It is not an exhaustive list, but an indication of what can be included in scheme regulations.

Paragraph 1 allows for scheme regulations to set out details of the persons who are eligible for membership of the scheme and the conditions that apply to eligibility. Scheme regulations may relate to a narrower class than those who could be covered by the scheme (for example where some of those workers belong to other public service schemes).

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Paragraph 2 provides a non-exhaustive list of some of the benefits for employees that may be written into regulations, including: pensions; benefits payable on death (including death in service); and compensation payments for death, injury or redundancy.

Paragraph 3 provides a non-exhaustive list of some of the types of people to whom benefits can be paid under the regulations of the scheme. These include: active, deferred and pensioner members; pension credit members; and their surviving spouses, civil partners and dependants.

Paragraph 4 allows for regulations to set out conditions for making payments to members.

Paragraph 5 allows for regulations to set out the circumstances in which benefits can be assigned to other persons and any restrictions on such assignment.

Paragraph 6 allows for regulations to set out how and when benefits can be forfeited or suspended.

Paragraph 7 allows for regulations to set out how schemes may recover any benefits that have been overpaid.

Paragraph 8 allows for scheme regulations to exclude double recovery of compensation or damages, including by modifying rights to compensation or damages where two sources of compensation or damages would otherwise be available for the same matter.

Paragraph 9 allows for regulations to set out provisions for the making of contributions by employers and employees, including contribution rates. Interest may be charged on the late payment of contributions, whether by employees or employers.

Paragraph 10 allows for regulations to set out how transfers of accrued pension “pots” will work and also any lump sum payments that can be made, in order to enable pension benefits to be transferred into, out of, or between schemes.

Paragraph 11 allows for regulations for schemes which are funded to detail how such funds will be administered and managed, including: their investment arrangements and strategy; provisions for trustees and training; and how funds will be wound up.

Paragraph 12 provides a non-exhaustive list of the provisions that may be included in regulations that relate to the administration and management of the scheme.

Paragraph 13 allows for scheme regulations to provide for the functions of the scheme manager or responsible authority to be delegated, and for further delegation of such functions.

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Paragraph 14 allows for scheme regulations to provide for employers to make payments to the scheme manager. This includes contributions to the administrative cost of the scheme and additional payments where a failure by the employer to comply with obligations under the scheme has increased those administrative costs. Interest can also be provided for under this paragraph.

Paragraph 15 allows for regulations to set out the steps to be taken by schemes for resolving disputes and appeals. Schemes may provide for questions of law that have to be decided by the responsible authority to be determined instead by a court of law.

***Schedule 4: Regulatory oversight***

Schedule 4 contains amendments to the Pensions (Northern Ireland) Order 2005 (“the 2005 Order”), in relation to the regulatory responsibility of the Pensions Regulator for public service pension schemes.

Paragraph 3 amends Article 9 of the 2005 Order to allow the Pensions Regulator to issue an improvement notice by reference to a code of practice issued under new Article 85A (see below); and to ensure that certain provisions in this Bill fall within the definition of “pensions legislation” so that improvement notices can be issued if they are breached.

Paragraph 4 inserts new Article 10A to allow the Pensions Regulator to appoint an appropriately skilled person to help a pension board carry out its functions. The pension board will be responsible for assisting the scheme manager in the administration and governance of the scheme. If the board is having difficulty in appropriately performing that role, expert help may be necessary. The pension board must have regard to the advice of the appropriately skilled person, and the skilled person’s costs are to be met by the scheme manager.

Paragraph 5 amends Article 13 to provide that the Pensions Regulator may intervene and help to recover unpaid contributions that are owed to a public service pension scheme by an employer under that scheme.

Paragraphs 6, 8 and 9 make consequential amendments to Articles 65, 66 and 68, inserting references to pension board members to reflect the new public service pension scheme pension board structure.

Paragraph 7 inserts a new Article 65A requiring the scheme manager of a public service pension scheme to notify the Pensions Regulator of an employer’s failure to pay pensions contributions on time if that failure is likely to be something that the Pensions Regulator would consider to be materially significant to the Regulator in the exercise of its functions (for example, in considering whether the employer is fulfilling its obligations and being

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satisfied that the scheme is being managed properly). Failure to report can lead to a civil penalty.

Paragraph 10 adds record keeping (as required by clause 16) to the list of provisions in Article 68 of the 2005 Order, in respect of which the Pensions Regulator may enter premises to investigate compliance.

Paragraph 11 amends Article 84 of the 2005 Order, requiring the Regulator to notify the scheme manager before making a report under that Article in respect of a public service pension scheme. This requirement will mean that the scheme manager is aware that the Regulator intends to issue a report about the scheme and can choose to take remedial action in advance if they wish. The scheme manager cannot prevent the Regulator from issuing a report.

Paragraph 12 inserts new Article 84A requiring the Regulator to report concerns to the scheme manager where the Regulator has reasonable grounds to suspect or believe that a member of the pension board has misappropriated any assets of the scheme, or has a conflict of interest in relation to the investment of assets in the scheme. Under the Order the Pensions Regulator does not have a formal role in relation to funding or investment for the funded schemes. However, in the course of undertaking oversight of administration and governance of the schemes it is possible that the Regulator may be made aware of inappropriate behaviour by a member of the pension board in relation to the scheme assets or investments. As the scheme manager is responsible for setting up and appointing the pension board, it is appropriate that any concerns are directed to the scheme manager to address. Privilege attaches to any such report, unless it is shown that it is maliciously motivated. The Article also makes clear that a conflict of interest in relation to investment of assets does not arise merely from any person being a member of the relevant scheme.

Paragraph 14 inserts new Article 85A, allowing and, in certain cases, requiring the Pensions Regulator to issue codes of practice for public service schemes. A list of matters that codes must cover is set out at new Article 85A(2). The requirement to issue codes of practice is at the core of the Pensions Regulator's new role in relation to public service schemes. To help ensure schemes meet good standards of administration and governance, those involved in administering them need to know what standards they should be aiming to achieve. This Article is similar to Article 85 of the 2005 Order and replicates the provisions of that Article regarding: revision of codes of practice; effect of failing to observe codes of practice; admissibility in evidence; the scope of codes of practice; and the procedures relating to them. The paragraph also contains a power for the Department for Social Development to prescribe other matters which must be covered by codes if in the future it is considered necessary to do so.

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Paragraph 19 amends the 2005 Order by inserting a new Article 225A, which places a requirement on members of the pension board to have knowledge and understanding about the scheme and the law relating to pensions and any other prescribed matters. As the pension board is responsible for assisting the scheme manager in the administration of the scheme, it is appropriate that those individuals carrying out this role should have appropriate knowledge about the scheme they are helping to run. This provision is similar to Article 224 of the 2005 order which places requirements on trustees to have knowledge and understanding about the scheme which they are running and the law relating to pensions more generally.

Paragraph 21 amends the 2005 Order by inserting a new Article 226B into that order to place a requirement on the scheme manager of a public service pension scheme to have an adequate system of internal controls.

***Schedule 5: Existing pension schemes***

Schedule 5 contains a list of powers that are used to make schemes, the provision of benefits under which is restricted by clause 18 in relation to service after the closing date set by that clause. The restrictions on existing schemes do not apply to the provision of injury and compensation benefits and these are excepted from the scope of the restriction where relevant.

Paragraphs 1 to 7 list powers to make existing schemes, and any applicable exceptions, in respect of:

- civil servants at paragraph 1;
- the devolved judiciary at paragraphs 2;
- local government workers at paragraph 3;
- teachers at paragraph 4;
- health service workers at paragraph 5;
- fire and rescue workers at paragraph 6;
- members of police forces at paragraph 7;

The meaning of the terms “compensation benefits” and “injury benefits” is set out in clause 33.

***Schedule 6: Existing injury and compensation schemes***

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Schedule 6 lists powers to make existing injury or compensation schemes. Clause 19 permits scheme regulations to close such schemes at a future date, subject to any exceptions provided for by the scheme regulations.

Paragraphs 1 to 7 list the powers under which existing injury and compensation schemes are made. This covers:

- civil servants at paragraph 1;
- local government workers at paragraph 2;
- teachers at paragraph 3;
- health service workers at paragraph 4;
- fire and rescue workers at paragraph 5;
- members of police forces at paragraph 6; and
- compensation schemes for loss of office at paragraph 7.

The meaning of the terms “compensation benefits” and “injury benefits” is set out in clause 33.

***Schedule 7: Final salary link***

Final salary scheme pension benefits accumulated up until the date that existing schemes close by virtue of either clause 18(1) or clause 31(1) are to be calculated by reference to the member’s final salary at the point they retire or otherwise leave pensionable service in a new scheme (not the point at which their final salary scheme was closed). This final salary link applies to all past service in final salary schemes prior to the closing date.

Paragraph 1 deals with a person who remains in an old scheme for their past service and becomes a member of a new scheme under clause 1 or a new public body pension scheme. If their service in the old scheme and in the new scheme is continuous then, in determining the person’s final salary for the purposes of the old scheme, their service in the old scheme is to be regarded as having ended when their service in the new scheme ends, and their pensionable earnings from their new scheme service are to be regarded as derived from the old scheme service. By sub-paragraph (2), scheme regulations made under this Bill may set out a distinct definition of earnings for the purposes of the final salary link. However, in doing so, the amount of earnings in the new scheme which are to be taken as pensionable earnings for the purposes of the final salary link cannot be materially less than the earnings

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that would have been the person's pensionable earnings had service in the new scheme been old scheme service (sub-paragraph (3)).

Paragraph 2 makes the same provision in the case of a person who moves to a different public service pension scheme (such as a move from the Health and Social Care Pension Scheme into the Local Government Pension Scheme (Northern Ireland)) when the old scheme is closed, and whose benefits under their original old scheme are transferred to their new employer's old scheme. By subparagraph (2), scheme regulations made under this Bill may set out a distinct definition of pensionable earnings for the purposes of the final salary link. However, in doing so, the amount of earnings in the new scheme which are to be taken as pensionable earnings for the purposes of the final salary link cannot be materially less than the earnings that would have been the person's pensionable earnings had service in the new scheme been deemed transfer scheme service (sub-paragraph (3)). Sub-paragraph (4) provides that in paragraph 2 a transfer of rights from one old scheme to another includes the making of a transfer payment in respect of such rights.

The different existing schemes determine final salary in different ways. However, taking the Classic section of the Principal Civil Service Pension Scheme (Northern Ireland) ("PCSPS(NI)") as an example, "pensionable earnings" essentially means the highest of the last three years of reckonable service (to determine what someone's final salary is in PCSPS(NI) Classic it is necessary to consider the level of their salary during the last three years of their reckonable service). This is why paragraph 1 provides that in determining the person's final salary for the purposes of the old scheme, the old scheme service is to be regarded as having ended when the new scheme service ends, and such earnings derived from the new scheme (as the scheme regulations may specify) are to be regarded as derived from the old scheme service. Paragraph 2 makes similar provision in respect of determining a person's final salary for the purposes of the transfer scheme.

The service which is treated as pensionable for the purposes of the old scheme may include service transferred into the old scheme (including service in the private sector transferred into the old scheme under the Fair Deal policy). Such service will count as "old scheme service" within the meaning of paragraphs 1 and 2. These paragraphs deliver the final salary link for those who transfer service into the old scheme under the Fair Deal policy.

Paragraph 3 sets out what is meant by continuous service in paragraphs 1 and 2. Any period when the person was in pensionable service in another public service or new public body scheme, and any gap in pensionable service that does not exceed five years in length, is to be disregarded, and in such circumstances service is to be considered continuous.

Paragraph 4 makes it clear that if the person had periods of service with two or more different new schemes under clause 1 or a new public body pension scheme, pensionable service with

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the last of those schemes is to be taken into account when calculating the member's final salary under paragraphs 1 or 2.

Paragraph 5 allows scheme regulations to provide that a pension that is in payment under an existing public service or public body pension scheme cannot be recalculated by reference to Schedule 7 following a subsequent period of public service employment. Subparagraph (2) would allow such provision to be made by amending the relevant existing scheme.

This Schedule sets the minimum level of final salary link that applies to all the schemes closed under clause 18(1) or clause 31(1). However, it is not exhaustive and scheme regulations can (subject to the consent requirements in clause 3) make provision for the final salary link to apply in additional circumstances, as long as this is not inconsistent with what is said in the Schedule.

***Schedule 8: Consequential and minor amendments***

Schedule 8 contains minor and consequential amendments to primary legislation. Many of the amendments in this Schedule annotate powers to make pension or other benefit schemes, where applicable, to note that they are subject to the restrictions placed on the use of those powers by clauses 18 and 19 (restrictions on benefits provided under existing schemes). They are not commented on further in these notes.

***Paragraph 2: Pensions (Increase) Act (Northern Ireland) 1971***

Paragraph 2 amends the Pensions (Increase) Act 1971 to clarify how the uprating provisions in that Act operate on public service pensions that are either protected by the final salary link in Schedule 7 or are career average schemes to which the restrictions in clauses 18(1) or 31(1) apply.

Paragraph 5 adds pensions made under the Act to the list of official pensions in Schedule 2 of the Pensions (Increase) Act (Northern Ireland) 1971. The effect is to provide for the annual uprating of deferred pensions and pensions in payment under the mechanism which that Act provides.

***Paragraphs 18 to 20: Pension Schemes (Northern Ireland) Act 1993***

These paragraphs amend the Pension Schemes (Northern Ireland) Act 1993, in respect of schemes made under clause 1, to allow a deferred pension age that is linked to state pension age (see clause 10) to be greater than 65.

***Schedule 9: Existing schemes for civil servants: extension of access***

Schedule 9 amends the Superannuation (Northern Ireland) Order 1972 to extend access to the schemes under that Order which provide for superannuation benefits for civil servants.

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Currently, admission to the Principal Civil Service Pension Scheme (Northern Ireland) (PCSPS(NI)) and other schemes made under Article 1 of the Superannuation (Northern Ireland) Order 1972 is restricted to those in employment in the civil service or those in an employment or office listed in Schedule 1 to that Order. Restrictive criteria apply to adding employments or offices to Schedule 1 to the 1972 Order. Members of the PCSPS(NI) who are compulsorily transferred out of the civil service to an independent provider of public services are therefore not able to retain membership (instead the current Fair Deal policy applies, requiring the new employer to provide a broadly comparable pension and advantageous bulk transfer terms).

The current Fair Deal policy is due to be amended to allow people under the above circumstances to retain access to their public service pension before the new schemes are introduced. Due to the restrictions on access to the PCSPS(NI), the new Fair Deal policy could not apply without a change to the primary legislation. Schedule 9 aims to make this change to allow access to people who are not currently entitled to access under the 1972 Order. The Schedule will come into force on Royal Assent, to ensure that the new Fair Deal policy can be implemented in relation to the PCSPS(NI) with immediate effect. Any delay may mean that staff who are being moved out of the civil service could miss the opportunity to remain in their current pension arrangements and delay progress of improvements to public service delivery.

New paragraph (3A) of Article 3 of the 1972 Order provides that the Article will also apply to persons serving in an employment or office specified under new Article 3A of the 1972 Order.

Paragraph 3 inserts new Article 3A which gives the Department of Finance and Personnel the power to specify employments and offices for the purposes of the new 3(3A) Article of the 1972 Order.

New Article 3A(1) provides that the Department of Finance and Personnel may specify in a list the employments and offices which will qualify persons for admission to a scheme by virtue of new Article 3(3A). An employment or office may be specified only if sub paragraph (2), (3) or (4) of Article 3A is satisfied.

Sub paragraph (2) applies where staff are transferred to a new employer after these provisions come into force, and so would otherwise cease to be entitled to membership of the PCSPS(NI). If persons serving in that office or employment would have been eligible to be members of the scheme on the point of transfer, the Department of Finance and Personnel can specify the office or employment for the purposes of new Article 3(3A); the staff will then be entitled to retain access to the scheme.

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Sub paragraph (3) applies where staff were transferred to a new employer before the provisions come into force and have ceased to be members, or to be entitled to membership, of the PCSPS(NI). If persons serving in that office or employment would have been eligible to be members of the scheme before the transfer then the Department of Finance and Personnel can specify the employment or office for the purposes of Article 3(3A); the staff will then be entitled to regain access to the scheme.

Sub paragraph (4) allows the Department of Finance and Personnel to specify an employment or an office in particular cases where it determines that it is appropriate to do so and the employment or office comes within a description set out in regulations. The general principle is that access under these provisions is for individuals who were entitled to access to the PCSPS(NI) at the point when they are moved to a new employer. The intention is that subsection (4) will only be used in exceptional cases as circumscribed by the descriptions in the regulations and the determination of the Department of Finance and Personnel.

Sub paragraph (5) will allow access to be granted by virtue of subsection (4) with retrospective effect. This provision will allow the scheme to deal with historic anomalies.

Sub paragraph (6) requires the list of employments and offices which qualify persons for access to the PCSPS(NI) (and any amendments to the list) to be published.

Regulations made by the Department of Finance and Personnel under sub paragraph (7) will set out the information that the published list must contain. It is intended that this will include: details of the employments and offices specified; the name of the employers; the dates from which access through this route is granted; and the circumstances that must exist for access to continue.

Those who gain access to the PCSPS(NI) through this route will move into the new schemes once they are established under the Bill and the closing date as set out in clause 18 has passed (as for other members, except for those who are protected by transitional provisions). In the new schemes, access will be extended where required under the procedure in clause 25.

## **FINANCIAL EFFECTS OF THE BILL**

14. The Bill provides the legislative framework for devolved public service pension schemes to be reformed on line with core provisions and therefore in itself does not have any financial implications.
15. The Department does not consider that the core provisions of the Bill will lead to any increased expenditure in any area where Northern Ireland Department currently make regulations for public service pension schemes.

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16. Clause 35 of the Bill makes financial provision for regulations which may be made in future by the Department of Justice under the Bill. This eventuality is predicated on the basis of the Department of Justice assuming the role of 'responsible authority' for schemes for devolved Judicial Offices. Under current arrangements the responsible authority for the pension arrangements made for devolved judicial offices is the Ministry of Justice. Any change to the current approach will require formal agreement by the relevant Ministers for OFMDFM, DOJ, DEL and DSD.
17. HM Treasury confirmed to the Minister of Finance and Personnel on 3 December 2012 that a proportional reduction will be applied to the Northern Ireland block allocation if legislation to reform devolved public service pension arrangements in Northern Ireland is not concluded to the deadlines contained in the Westminster Public Service Pensions Act 2013. (The deadline for reform for the schemes made for public employments listed at clause 1 of the Bill is 1 April 2015, with the exception of the scheme for the local government workers which has a deadline of 1 April 2014).
18. The Department has undertaken initial analysis on the financial effects of not implementing the core provisions of the Bill in the devolved public service pension schemes to the timescales contained in the Westminster Public Service Pensions Act 2013. The overall projected cost is estimated in excess of £262m per year. Costs for each of the main public service schemes are: Northern Ireland Teachers Pension Scheme - £62m; Police Pension scheme - £18m; Principal Civil Service Pension Scheme (Northern Ireland) - £ 60m; Fire Fighters Pension Scheme- £ 23m; Health and Social Care Pension Scheme- £100m. These figures are based on calculations made the Government Actuary's Department to estimate the recurring annual cost of reduced public service pension liabilities if schemes are not reformed.

**HUMAN RIGHTS ISSUES**

19. Article 1 of Protocol 1 to the European Convention on Human Rights (ECHR) provides that every natural or legal person is entitled to the peaceful enjoyment of their possessions. Pensionable benefits that have already been earned or accrued (through length of service, payment of contributions, or otherwise) are widely accepted to be 'possessions' within the meaning of Article 1 Protocol 1, although the exact nature of the benefits that have been earned or accrued requires careful examination. It is not anticipated that the Bill will have human rights implications, apart from the following provisions:

Clause 3: *Scheme regulations*. This allows for scheme regulations to contain provisions with retrospective effect. Such retrospective changes, if made, may constitute an interference with property within the meaning of Article 1 Protocol 1 of

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the ECHR. The Bill incorporates safeguards against the application of a retrospective provision which may constitute such interference. Under clause 23 a responsible authority which proposes to make scheme regulations containing retrospective provision which appears to the authority to have significant adverse effects in relation to the pension payable to or in respect of members of the scheme, must first obtain the consent of employee representatives. Such regulations will also be subject to the affirmative resolution procedure in the Assembly.

Clause 9: *Revaluation*. In the rare case that the general rate of prices and/or earnings falls, revaluation could take place according to a negative percentage, which will have the effect of shrinking the value of the accrued pension of an active member. There is potential for argument that such a revaluation could constitute an interference with property within the meaning of Article 1 Protocol 1 if the potential to accrue a larger pensionable benefit could be considered to be a 'possession', although as the possibility for negative revaluation is an inherent part of the pension benefits as they are earned this may be hard to sustain. Under the Bill any Order that would implement a revaluation according to a negative percentage will be subject to the affirmative procedure in the Assembly.

Clause 10: *Pension Age*. A change in state pension age would mean that scheme members take their pensions accrued under the new schemes at an earlier or later age. This may constitute an interference with property within the meaning of Article 1 Protocol 1, as pensionable benefits which have been accrued are likely to be property within the meaning of that Article. However, all benefits accrued are subject to the link between normal pension age and state pension age, and so it could be said that there is no expectation to take full pension at a specific age: the expectation is that full pension will be taken at the then prevailing state pension age. In the event that there was any interference, a lowering of state pension age would be beneficial and any adverse interference would only arise if the level of state pension age rose. The exception for members of the police service and firefighters, may also amount to discrimination within the meaning of Article 14 of the ECHR, although the unique characteristics of the work of these groups is not listed as a protected ground in Article 14 and may not come under the heading of "other status".

Clause 12: *Employer Costs Cap*. This provides for a mechanism that, if in the future scheme costs rise outside margins of a costs cap set by directions made by the Department of Finance and Personnel, scheme regulations will take steps to bring costs back into that level, by adjusting contribution levels or reducing benefits. If this future event occurs, it might potentially be an interference with possessions within the meaning of Article 1 Protocol 1 of the ECHR depending upon the facts as they are at that time. However, it is very unlikely that any interference with possessions will

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arise in the event that, as intended, no adjustments are made to benefits already accrued.

Clause 18: *Restriction of existing schemes*. This clause which prevents scheme members from accruing any further rights in their existing schemes, does not engage Article 1 Protocol 1 of the ECHR because this Article does not guarantee an open-ended right to acquire further possessions such as benefits in the current pension schemes. Nor is there any discrimination on the grounds of age under Article 14 (as under current transitional plans the younger members of the scheme will be affected more by the changes) as Article 14 cannot apply in isolation. In any case the provision of transitional and tapering protection for older members (who have less time to prepare for the change and are accordingly more vulnerable) itself shows why any potential for interference would be justified and proportionate.

**EQUALITY IMPACT ASSESSMENT**

20. An equality screening exercise has been conducted and concludes that a full equality impact assessment is not required<sup>3</sup>.
21. Scheme specific subordinate legislation made under the Bill will be subject to individual equality impact assessment screening.

**SUMMARY OF THE REGULATORY IMPACT ASSESSMENT**

22. The Bill will not impact on business, the voluntary sector or the environment. It has not therefore been subject to a regulatory impact assessment.

**LEGISLATIVE COMPETENCE**

23. The Minister of Finance and Personnel had made the following statement under section 9 of the Northern Ireland Act 1998:

*"In my view the Public Service Pensions Bill would be within the legislative competence of the Northern Ireland Assembly."*

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<sup>3</sup>The Department of Finance and Personnel equality Screening document is available at: [www.dfpni.gov.uk/policy-screening-public-service-pensions-bill](http://www.dfpni.gov.uk/policy-screening-public-service-pensions-bill)

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## Public Service Pensions Bill

[28/05/2013 12:07:42]

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*Public Service Pensions*

A

## B I L L

TO

Make provision for public service pension schemes; and for connected purposes.

**B**E IT ENACTED by being passed by the Northern Ireland Assembly and assented to by Her Majesty as follows:

*Establishment of new schemes*

### **Schemes for persons in public service [j1]**

1.—(1) Regulations may establish schemes for the payment of pensions and other benefits to or in respect of persons specified in subsection (2).

(2) Those persons are—

- (a) civil servants;
- (b) holders of judicial office;
- (c) local government workers;
- (d) teachers;
- (e) health service workers;
- (f) fire and rescue workers;
- (g) members of the police service.

(3) These terms are defined in Schedule 1.

(4) In this Act, regulations under this section are called “scheme regulations”.

### **Responsible authority for schemes [j2]**

2.—(1) The persons who may make scheme regulations are set out in Schedule 2.

(2) In this Act, the person who may make scheme regulations for any description of persons specified in section 1(2) is called the “responsible authority” for the scheme for those persons.

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*Public Service Pensions*

**Scheme regulations [j3]**

3.—(1) Scheme regulations may, subject to this Act, make such provision in relation to a scheme under section 1 as the responsible authority considers appropriate.

(2) That includes in particular—

- (a) provision as to any of the matters specified in Schedule 3;
- (b) consequential, supplementary, incidental or transitional provision in relation to the scheme or any provision of this Act.

(3) Scheme regulations may—

- (a) make different provision for different purposes or cases (including different provision for different descriptions of persons);
- (b) make retrospective provision (but see section 23);
- (c) allow any person to exercise a discretion.

(4) The consequential provision referred to subsection (2)(b) includes consequential provision amending any primary legislation made or passed before or within the period of 12 months from the date on which this Act receives Royal Assent (as well as consequential provision amending any secondary legislation).

(5) Scheme regulations require the consent of the Department of Finance and Personnel before being made, unless they are to be made by that Department.

*Governance*

**Scheme manager [j4]**

4.—(1) Scheme regulations for a scheme under section 1 must provide for a person to be responsible for managing or administering—

- (a) the scheme, and
- (b) any statutory pension scheme that is connected with it.

(2) In this Act, that person is called the “scheme manager” for the scheme (or schemes).

(3) The scheme manager may in particular be the responsible authority.

(4) Subsection (1) does not apply to a scheme under section 1 which is an injury or compensation scheme.

(5) Scheme regulations may comply with the requirement in subsection (1)(a) or (b) by providing for different persons to be responsible for managing or administering different parts of a scheme (and references in this Act to the “scheme manager”, in such a case, are to be construed accordingly).

(6) For the purposes of this Act, a scheme under section 1 and another statutory pension scheme are connected if and to the extent that the schemes make provision in relation to persons of the same description.

(7) Scheme regulations may specify exceptions to subsection (6).

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**Pension board [j5]**

5.—(1) Scheme regulations for a scheme under section 1, other than a scheme made by virtue of section 1(2)(c) (local government workers), must provide for the establishment of a pension board for the scheme.

(2) Scheme regulations for a scheme under section 1, which is a scheme made by virtue of section 1(2)(c), must provide for the appointment of the Northern Ireland Local Government Officers' Superannuation Committee as the pension board for that scheme.

(3) It is the responsibility of the pension board for a scheme to assist the scheme manager (or each scheme manager) in relation to the following matters—

- (a) securing compliance with the scheme regulations and other legislation relating to the governance and administration of the scheme and any statutory pension scheme that is connected with it;
- (b) securing compliance with requirements imposed in relation to the scheme and any connected scheme by the Pensions Regulator;
- (c) such other matters as the scheme regulations may specify.

(4) In making the regulations the responsible authority must have regard to the desirability of securing the effective and efficient governance and administration of the scheme and any connected scheme.

(5) The regulations must include provision—

- (a) requiring the scheme manager—
  - (i) to be satisfied that a person to be appointed as a member of the board does not have a conflict of interest, and
  - (ii) to be satisfied from time to time that none of the members of the board has a conflict of interest;
- (b) requiring a member of the board, or a person proposed to be appointed as a member of the board, to provide the scheme manager with such information as the scheme manager reasonably requires for the purposes of provision under paragraph (a);
- (c) requiring the board to include employer representatives and member representatives in equal numbers.

(6) In subsection (5)(a) “conflict of interest”, in relation to a person, means a financial or other interest which is likely to prejudice the person's exercise of functions as a member of the board (but does not include a financial or other interest arising merely by virtue of membership of the scheme or any connected scheme).

(7) In subsection (5)(c)—

- (a) “employer representatives” means persons appointed to the board for the purpose of representing employers for the scheme and any connected scheme;
- (b) “member representatives” means persons appointed to the board for the purpose of representing members of the scheme and any connected scheme.

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(8) In this Act, “pension board” means a board established or appointed under this section.

(9) This section does not apply to a scheme under section 1 which is an injury or compensation scheme.

**Pension board: information [j6]**

6.—(1) The scheme manager for a scheme under section 1 and any statutory pension scheme that is connected with it must publish information about the pension board for the scheme or schemes (and keep that information up-to-date).

(2) That information must include information about—

- (a) who the members of the board are,
- (b) representation on the board of members of the scheme or schemes, and
- (c) the matters falling within the board’s responsibility.

(3) This section does not apply to a scheme under section 1 which is an injury or compensation scheme.

**Scheme advisory board [j7a]**

7.—(1) Scheme regulations for a scheme under section 1 which is a defined benefits scheme must provide for the establishment of a board with responsibility for providing advice to the responsible authority, at the authority’s request, on the desirability of changes to the scheme.

(2) Where by virtue of section 4(5), there is more than one scheme manager for a scheme mentioned in subsection (1) (and accordingly there is more than one pension board for the scheme), the regulations may also provide for the board to provide advice (on request or otherwise) to the scheme managers or the scheme’s pension boards in relation to the effective and efficient administration and management of—

- (a) the scheme and any statutory pension scheme that is connected with it, or
- (b) any pension fund of the scheme and any connected scheme.

(3) A person to whom advice is given by virtue of subsection (1) or (2) must have regard to the advice.

(4) The regulations must include provision—

- (a) requiring the responsibility authority—
  - (i) to be satisfied that a person to be appointed as a member of the board does not have a conflict of interest, and
  - (ii) to be satisfied from time to time that none of the members of the board has a conflict of interest;
- (b) requiring a member of the board, or a person proposed to be appointed as a member of the board, to provide the responsible authority with such information as the authority reasonably requires for the purposes of provision under paragraph (a).

(5) In subsection (4)(a) “conflict of interest”, in relation to a person, means a financial or other interest which is likely to prejudice the person’s exercise of functions as a member of the board (but does not include a financial or other

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interest arising merely by virtue of membership of the scheme or any connected scheme).

(6) In this Act, a board established under this section is called a “scheme advisory board”.

*Design*

**Types of scheme [j7]**

- 8.—(1) Scheme regulations may establish a scheme under section 1 as—
- (a) a defined benefits scheme,
  - (b) a defined contributions scheme, or
  - (c) a scheme of any other description.
- (2) A scheme under section 1 which is a defined benefits scheme must be—
- (a) a career average revalued earnings scheme, or
  - (b) a defined benefits scheme of such other description as regulations made by the Department of Finance and Personnel may specify.
- (3) Such regulations may not specify a final salary scheme under subsection (2)(b).
- (4) A scheme under section 1 is a “career average revalued earnings scheme” if—
- (a) the pension payable to or in respect of a person, so far as it is based on the person’s pensionable service, is determined by reference to the person’s pensionable earnings in each year of pensionable service, and
  - (b) those earnings, or a proportion of those earnings accrued as a pension, are under the scheme revalued each year until the person leaves pensionable service.
- (5) Regulations made by the Department of Finance and Personnel under subsection (2)(b) are subject to the negative resolution.

**Revaluation [j8]**

- 9.—(1) This section applies in relation to a scheme under section 1 which—
- (a) requires a revaluation of pensionable earnings of a person, or a proportion of those earnings accrued as a pension, until the person leaves pensionable service, and
  - (b) requires such a revaluation to be by reference to a change in prices or earnings (or both) in a given period.
- (2) The change in prices or earnings to be applied for the purposes of such a revaluation is to be such percentage increase or decrease as an order made by the Department of Finance and Personnel may specify in relation to the period.
- (3) For the purposes of making such an order the Department of Finance and Personnel may determine the change in prices or earnings in any period by reference to the general level of prices or earnings estimated in such manner as the Department considers appropriate.

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(4) An order made by the Department of Finance and Personnel under this section—

- (a) must be made in each year;
- (b) may make different provision for different purposes.

(5) An order made by the Department of Finance and Personnel under this section is subject to—

- (a) the affirmative procedure, if the order specifies a percentage decrease for the purposes of subsection (2), and
- (b) negative resolution, in any other case.

(6) For the purposes of subsection (1) any gap in the person's pensionable service which does not exceed 5 years is to be disregarded.

**Pension age [j9]**

**10.—**(1) The normal pension age of a person under a scheme under section 1 must be—

- (a) the same as the person's state pension age, or
- (b) 65, if that is higher.

(2) Subsection (1) does not apply in relation to—

- (a) fire and rescue workers who are firefighters, and
- (b) members of the police service.

The normal pension age of such persons under a scheme under section 1 must be 60.

(3) The deferred pension age of a person under a scheme under section 1 must be—

- (a) the same as the person's state pension age, or
- (b) 65, if that is higher.

(4) Where—

- (a) a person's state pension age changes, and
- (b) the person's normal or deferred pension age under a scheme under section 1 changes as a result of subsection (1) or (3),

the change to the person's normal or deferred pension age must under the scheme apply in relation to all the benefits (including benefits already accrued under the scheme) which may be paid to or in respect of the person under the scheme and to which the normal or deferred pension age is relevant.

(5) In this Act—

- (a) "normal pension age", in relation to a person and a scheme, means the earliest age at which the person is entitled to receive benefits under the scheme (without actuarial adjustment) on leaving the service to which the scheme relates (and disregarding any special provision as to early payment of benefits on the grounds of ill-health or otherwise);
- (b) "deferred pension age", in relation to a person and a scheme, means the earliest age at which the person is entitled to receive benefits under the scheme (without actuarial adjustment) after leaving the service to which

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the scheme relates at a time before normal pension age (and disregarding any special provision as to early payment of benefits on the grounds of ill-health or otherwise);

- (c) “state pension age”, in relation to a person, means the pensionable age of the person as specified from time to time in Part 1 of Schedule 2 to the Pensions (Northern Ireland) Order 1995 (NI 22).

*Cost control*

**Valuations [j10]**

**11.—**(1) Scheme regulations for a scheme under section 1 which is a defined benefits scheme must provide for actuarial valuations to be made of—

- (a) the scheme, and  
(b) any statutory pension scheme that is connected with it.

(2) Such a valuation is to be carried out in accordance with directions given by the Department of Finance and Personnel.

(3) Directions under subsection (2) may in particular specify—

- (a) how and when a valuation is to be carried out;  
(b) the time in relation to which a valuation is to be carried out;  
(c) the data, methodology and assumptions to be used in a valuation;  
(d) the matters to be covered by a valuation;  
(e) where a scheme under section 1 and another statutory pension scheme are connected, whether the schemes are to be valued separately or together (and if together, how);  
(f) the period within which any changes to the employer contribution rate under a scheme under section 1 must take effect following a valuation.

(4) Directions under subsection (2) may only be given, and variations and revocations of such directions may only be made, after the Department of Finance and Personnel has consulted the Government Actuary.

(5) Scheme regulations for a scheme under section 1 which is not a defined benefits scheme may provide for actuarial valuations to be made of the scheme and any statutory pension scheme which is connected with it; and if they do, subsections (2) to (4) apply.

**Employer cost cap [j11]**

**12.—**(1) Scheme regulations for a scheme under section 1 which is a defined benefits scheme must set a rate, expressed as a percentage of pensionable earnings of members of the scheme, to be used for the purpose of measuring changes in the cost of the scheme.

(2) In this section, the rate set under subsection (1) is called the “employer cost cap”.

(3) The employer cost cap is to be set in accordance with directions given by the Department of Finance and Personnel.

(4) Directions given by the Department of Finance and Personnel may in particular specify—

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- (a) how the first valuation under section 11 of a scheme under section 1 is to be taken into account in setting the cap;
  - (b) the costs, or changes in costs, that are to be taken into account on subsequent valuations of a scheme under section 1 for the purposes of measuring changes in the cost of the scheme against the cap;
  - (c) the extent to which costs or changes in the costs of any statutory pension scheme which is connected with a scheme under section 1 are to be taken into account for the purposes of this section.
- (5) Regulations made by the Department of Finance and Personnel must make—
- (a) provision requiring the cost of a scheme (and any connected scheme) to remain within specified margins either side of the employer cost cap; and;
  - (b) for cases where the cost of a scheme would otherwise go beyond either of those margins, provision specifying a target cost within the margins.
- (6) For cases where the cost of the scheme would otherwise go beyond the margins, scheme regulations may provide for—
- (a) a procedure for the responsible authority, the scheme manager (if different), employers and members (or representatives of employers and members) to reach agreement on the steps required to achieve the target cost for the scheme, and
  - (b) the steps to be taken for that purpose if agreement is not reached under that procedure.
- (7) The steps referred to in subsection (6) may include the increase or decrease of members' benefits or contributions.
- (8) Regulations made by the Department of Finance and Personnel under this section may—
- (a) include consequential or supplementary provision;
  - (b) make different provision for different schemes.
- (9) Regulations made by the Department of Finance and Personnel under this section are subject to the negative resolution.

**Employer contributions in funded schemes [j12]**

- 13.—(1) This section applies in relation to a scheme under section 1 which is a defined benefits scheme with a pension fund.
- (2) Scheme regulations must provide for the rate of employer contributions to be set at an appropriate level to ensure—
- (a) the solvency of the pension fund, and
  - (b) the long-term cost-efficiency of the scheme, so far as relating to the pension fund.
- (3) For that purpose, scheme regulations must require actuarial valuations of the pension fund.
- (4) Where an actuarial valuation under subsection (3) has taken place, a person appointed by the responsible authority is to report on whether the following aims are achieved—

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- (a) the valuation is in accordance with the scheme regulations;
  - (b) the valuation has been carried out in a way which is not inconsistent with other valuations under subsection (3);
  - (c) the rate of employer contributions is set as specified in subsection (2).
- (5) A report under subsection (4) must be published; and a copy must be sent to the scheme manager and (if different) the responsible authority.
- (6) If a report under subsection (4) states that, in the view of the person making the report, any of the aims in that subsection has not been achieved—
- (a) the report may recommend remedial steps;
  - (b) the scheme manager must—
    - (i) take such remedial steps as the scheme manager considers appropriate, and
    - (ii) publish details of those steps and the reasons for taking them;
  - (c) the responsible authority may—
    - (i) require the scheme manager to report on progress in taking remedial steps;
    - (ii) direct the scheme manager to take such remedial steps as the responsible authority considers appropriate.
- (7) The person appointed under subsection (4) must, in the view of the responsible authority, be appropriately qualified.

*Administration*

**Information about benefits [j12b]**

**14.—**(1) Scheme regulations must require the scheme manager for a scheme under section 1 which is defined benefits scheme to provide benefit information statements to each person in pensionable service under the scheme in accordance with this section.

- (2) A benefit information statement must include—
  - (a) a description of the benefits earned by the person in respect of his or her pensionable service, and
  - (b) such other information as directions given by the Department of Finance and Personnel may specify.
- (3) The information included in a benefit information statement must comply with such requirements as directions given by the Department of Finance and Personnel may specify.
- (4) A benefit information statement must be provided—
  - (a) no later than the relevant date, and
  - (b) at least once in each year ending with the anniversary of that date.
- (5) The relevant date is the last day of the period of 17 months beginning with the day on which scheme regulations establishing the scheme come into force.
- (6) A benefit information statement must be provided in such manner as directions given by the Department of Finance and Personnel may specify.

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**Information about schemes [j13]**

**15.—**(1) Directions given by the Department of Finance and Personnel may require the scheme manager or responsible authority of a scheme under section 1 to—

- (a) publish scheme information, or
- (b) provide scheme information to the Department of Finance and Personnel.

(2) In subsection (1), “scheme information” means information about the scheme and any statutory pension scheme that is connected with it.

(3) The information to which directions given by the Department of Finance and Personnel under this section may relate includes in particular—

- (a) scheme accounts;
- (b) information about any scheme funding, assets and liabilities;
- (c) information about scheme membership;
- (d) information about employer and member contributions;
- (e) information about scheme administration and governance.

(4) Directions given by the Department of Finance and Personnel under this section may specify how and when information is to be published or provided.

(5) Directions given by the Department of Finance and Personnel under this section may not require publication or provision of anything that the scheme manager or responsible authority could not otherwise lawfully publish or provide.

**Records [j14]**

**16.—**(1) The scheme manager for a scheme under section 1 and any statutory pension scheme that is connected with it must keep such records as may be specified in regulations made by the Department for Social Development .

(2) Regulations under this section are subject to the negative resolution.

**Regulatory oversight [j15]**

**17.—**(1) Schedule 4 (regulatory oversight) contains provision relating to the regulation of schemes under section 1, new public body pension schemes and connected schemes.

(2) The Department for Social Development may by order make—

- (a) provision consequential on Schedule 4, and
- (b) further provision for, or in connection with, the regulation of public service pension schemes within the meaning of the Pensions (Northern Ireland) Order 2005 (as amended by that Schedule).

(3) The provision referred to in subsection (2) includes provision made by amending any legislation (including this Act).

(4) An order under this section may make different provision for different purposes.

(5) An order under this section is subject to the confirmatory procedure, that is to say, the order—

- (a) must be laid before the Assembly after being made; and

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- (b) takes effect on such date as may be specified in the order, but (without prejudice to the validity of anything done thereunder or to the making of a new order) ceases to have effect upon the expiration of a period of 6 months from that date unless at some time before the expiration of that period the order is approved by a resolution of the Assembly.

*Transitional*

**Restriction of existing pension schemes [j16]**

**18.—**(1) No benefits are to be provided under an existing scheme to or in respect of a person in relation to the person's service after the closing date.

(2) In this Act "existing scheme" means a scheme listed in Schedule 5 (whether made before or after this section comes into force).

(3) Subsection (1) does not apply—

- (a) in relation to an existing scheme which is a defined contributions scheme;
- (b) to benefits excepted by Schedule 5 (injury and compensation benefits).

(4) The closing date is—

- (a) 31 March 2014 for an existing scheme which is the relevant local government scheme, and
- (b) 31 March 2015 in any other case.

This is subject to subsection (7).

(5) Scheme regulations may provide for exceptions to subsection (1) in the case of—

- (a) persons who were members of an existing scheme, or who were eligible to be members of such a scheme, immediately before 1 April 2012, and
- (b) such other persons as the regulations may specify, being persons who before that date had ceased to be members of an existing scheme or to be eligible for membership of such a scheme.

(6) Exceptions under subsection (5) may, in particular, be framed by reference to the satisfaction of a specified condition (for example, the attainment of normal pension age under the existing scheme or another specified age) before a specified date.

(7) Where an exception to subsection (1) is framed by reference to the satisfaction of a specified condition before a specified date, scheme regulations may also provide for a different closing date for persons in whose case the condition—

- (a) is not satisfied before the specified date, but
- (b) is satisfied no more than 4 years after that date.

(8) Provision made under subsection (5) or (7) may in particular be made by amending the relevant existing scheme.

(9) In subsection (1), the reference to benefits in relation to a person's service includes benefits relating to the person's death in service.

(10) In subsection (4), "the relevant local government scheme" means regulations under Article 9 of the Superannuation Order.

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19.—(1) Scheme regulations for a scheme under section 1 may secure that no benefits are to be provided under a scheme listed in Schedule 6 that is connected with it.

(2) Where Schedule 6 specifies particular benefits in relation to a scheme, the power under subsection (1) is exercisable only in relation to those benefits.

(3) Scheme regulations may provide for exceptions to subsection (1).

(4) Provision made under this section may in particular be made by amending the connected scheme.

**Final salary link [j18]**

20. Schedule 7 contains provision for a “final salary link” in relation to schemes to which section 18(1) applies (and see section 31(13)).

*Procedure for scheme regulations***Consultation [j19]**

21.—(1) Before making scheme regulations the responsible authority must consult such persons (or representatives of such persons) as appear to the authority likely to be affected by them.

(2) The responsible authority must publish a statement indicating the persons that the authority would normally expect to consult under subsection (1) (and keep the statement up-to-date).

(3) Subsection (1) may be satisfied by consultation before, as well as by consultation after, the coming into force of this section.

**Procedure for protected elements [j20]**

22.—(1) This section applies where, after the coming into force of scheme regulations establishing a scheme under section 1, the responsible authority proposes to make further scheme regulations containing provision changing the protected elements of the scheme within the protected period.

(2) The responsible authority must—

(a) consult the persons specified in subsection (3) with a view to reaching agreement with them, and

(b) lay a report before the Assembly.

(3) The persons referred to in subsection (2)(a) are the persons (or representatives of the persons) who appear to the responsible authority to be likely to be affected by the regulations if they were made.

(4) The report under subsection (2)(b) must set out why the responsible authority proposes to make the regulations, having regard to the desirability of not making a change to the protected elements of a scheme under section 1 within the protected period.

(5) In this section—

“protected period” means the period beginning with the coming into force of this section and ending with 31 March 2040;

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“protected elements”, in relation to a scheme under section 1, means—

- (a) the extent to which the scheme is a career average revalued earnings scheme;
- (b) members’ contribution rates under the scheme;
- (c) benefit accrual rates under the scheme.

(6) In this section, references to a change to the protected elements do not include a change appearing to the responsible authority to be required by or consequential upon section 12 (employer cost cap).

(7) In a case where this section applies, there is no requirement to consult under section 21(1).

**Procedure for retrospective provision [j20a]**

**23.**—Where the responsible authority proposes to make scheme regulations containing retrospective provision which appears to the authority to have significant adverse effects in relation to the pension payable to or in respect of members of the scheme, the authority must first obtain the consent of the persons referred to in subsection (3).

(2) Where the responsible authority proposes to make scheme regulations containing retrospective provision which appears to the authority—

- (a) not to have significant adverse effects as specified in subsection (1), but
- (b) to have significant adverse effects in any other way in relation to members of the scheme (for example, in relation to injury or compensation benefits),

the authority must first consult the persons specified in subsection (3) with a view to reaching agreement with them.

(3) The persons referred to in subsections (1) and (2) are the persons (or representatives of the persons) who appear to the responsible authority to be likely to be affected by the provision if it were made.

(4) The responsible authority must, in a case falling within subsection (1) or (2), lay a report before the Assembly.

(5) In a case falling within subsection (1) or (2) there is no requirement to consult under section 21(1).

**Other procedure [j21]**

**24.**—(1) Scheme regulations are subject to the affirmative procedure (see section 34(1)) if—

- (a) they amend primary legislation,
- (b) section 23(1) or (2) (procedure for retrospective provision having significant adverse effects) applies, or
- (c) they are scheme regulations for a scheme relating to holders of judicial office, unless the pension board for that scheme has stated that it considers the regulations to be minor or wholly beneficial.

(2) Scheme regulations are subject to the negative resolution in any other case.

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

*New schemes: supplementary***Extension of schemes [j22]**

25.—(1) Scheme regulations for a scheme under section 1 may make provision for the payment of pensions and other benefits to or in respect of—

- (a) persons specified in section 1(2), but
- (b) in relation to whom the responsible authority could not otherwise make a scheme under section 1.

(2) Scheme regulations for a scheme under section 1 may make provision to deem persons of any description to fall within a given description of persons specified in section 1(2).

(3) Scheme regulations for a scheme under section 1 may specify persons, not being persons specified in section 1(2), as persons to whom the scheme may potentially relate.

(4) The persons specified under subsection (3) may be any persons (other than persons specified in section 1(2)) that the responsible authority considers appropriate.

(5) The responsible authority may then at any time determine that the scheme is to relate to some or all of those persons.

(6) By virtue of a determination under subsection (5) the scheme regulations then apply to the persons to whom the determination relates as they apply to other persons to or in respect of whom pensions and other benefits are provided under the scheme (or such class of other persons as may be specified in the determination).

(7) Subsection (6) is subject to—

- (a) any special provision made in the scheme regulations, and
- (b) a direction under subsection (8).

(8) Scheme regulations made under subsection (2) or (3) in relation to any persons may include provision authorising the responsible authority by direction to modify provisions of the regulations in their application to those persons for the purpose of—

- (a) securing appropriate protection against additional costs to the scheme that might result from the application of the scheme regulations to those persons,
- (b) obtaining information about those persons, their employers and other relevant persons, or
- (c) taking appropriate account of—
  - (i) the arrangements under which those persons are employed, and
  - (ii) the organisational structures of their employers.

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(9) The responsible authority for a scheme under section 1 must publish a list of the persons to whom the scheme relates by virtue of determinations under subsection (5) (and keep the published list up-to-date).

(10) A determination under subsection (5) may have retrospective effect.

(11) Where, by virtue of section 4(5), there is more than one scheme manager for a scheme under section 1, the responsible authority may delegate its functions under subsection (5) or (9) to the scheme managers, subject to such conditions as the responsible authority considers appropriate.

**Non-scheme benefits [j23]**

**26.**—(1) The scheme manager or employer for a scheme under section 1 may make such payments as the scheme manager or employer considers appropriate towards the provision, otherwise than by virtue of the scheme, of pensions and other benefits to or in respect of;

(a) persons within the description of persons specified in section 1(2) for which the responsible authority may make the scheme, and

(b) any other persons to whom a scheme relates by virtue of section 25.

(2) Subsection (1) is subject to any provision made in the scheme regulations for the scheme that restricts or otherwise affects the power to make payments under that subsection.

**Consequential and minor amendments [j24]**

**27.** Schedule 8 contains consequential and minor amendments.

*Existing schemes: supplementary*

**Existing local government scheme [j25]**

**28.**—(1) This section applies in relation to regulations under Article 9 of the Superannuation Order, which are in force immediately before the coming into force of this section.

(2) To the extent that—

(a) such regulations make provision for the payment of pensions and other benefits to or in respect of a person in relation to the person's service on or after 1 April 2014, and

(b) that provision could be made under scheme regulations, the regulations are to have effect as if they were scheme regulations relating to local government workers.

(3) Accordingly, to that extent a scheme under such regulations is to have effect as a scheme under section 1.

**Existing schemes for civil servants: extension of access [j26]**

**29.** Schedule 9 amends the Superannuation Order so as to extend access to schemes under Article 3 of that Order (schemes as respects civil servants, etc.).

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*Public body pension schemes*

**New public body pension schemes [j27b]**

**30.**—(1) The following provisions of this Act apply in relation to a new public body pension scheme (and any statutory pension scheme that is connected with it) as to a scheme under section 1 (and any connected scheme)—

- (a) section 3(1) and (2) and Schedule 3 (scheme regulations);
- (b) section 4 (scheme manager);
- (c) sections 5 and 6 (pension board), if the scheme has more than one member;
- (d) sections 8 to 10 (scheme design);
- (e) sections 11 and 12 (cost control);
- (f) sections 14 to 16 (information and records).

(2) For the purposes of subsection (1), the provisions referred to in that subsection are to be read with the following modifications—

- (a) references to scheme regulations are to be read as references to the rules of the scheme;
- (b) references to the responsible authority are to be read as references to the public authority which established the scheme.

(3) A new public body pension scheme, and any variation to the rules of the scheme, requires the consent of the Department of Finance and Personnel.

(4) In this Act—

“public body pension scheme” means a scheme (other than an existing scheme) established by a public authority for the payment of pensions and other benefits to or in respect of members or staff of a statutory body or the holder of a statutory office;

“new public body pension scheme” means a public body pension scheme established after the coming into force of this section.

**Power to restrict other existing public body pension schemes [j27a]**

**31.**—(1) This section applies to any public body pension scheme specified in an order made by the Department of Finance and Personnel and which relates to members or staff of a body, or the holder of an office, so specified (by name or description).

(2) The public authority responsible for the scheme must make provision to secure that no benefits are provided under the scheme to or in respect of a person in relation to the person’s service after a date determined by the authority.

(3) An order under subsection (1)—

- (a) must not specify a public body pension scheme which is a defined contributions scheme, and
- (b) must except injury or compensation benefits provided under a scheme which is specified.

(4) The public authority responsible for a scheme to which subsection (2) applies may provide for other exceptions to the provision made under subsection

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(2) and section 18 (6) and (7) apply in relation to any such exceptions (reading references to scheme regulations as references to rules of the scheme).

(5) Provision made under subsection (2) or (4) may in particular be made by amending the public body pension scheme.

(6) In subsection (2), the reference to benefits in relation to a person's service includes benefits relating to the person's death in service.

(7) If—

(a) subsection (2) applies to a scheme, and

(b) any of the persons to whom the scheme relates are not eligible for membership of a scheme under section 1,

the public authority responsible for the scheme may establish a new scheme for the payment of pensions or other benefits to or in respect of those persons (and see section 30).

(8) Where a scheme to which subsection (2) applies was established in exercise of a statutory function or other power, the function or power may not be exercised again so as to establish a new defined benefits scheme in relation to the body or office.

(9) In the case of a scheme established by deed of trust, subsections (2) and (4) apply irrespective of the provisions of the deed or the law relating to trusts.

(10) An order under subsection (1) may make consequential or supplementary provision, including in particular provision made by amending any legislation.

(11) An order under subsection (1) is subject to negative resolution.

(12) It is immaterial for the purposes of subsection (1) whether a scheme is made before or after the coming into force of this section.

(13) Schedule 7 contains provision for a “final salary link” in relation to schemes to which subsection (2) applies.

**Existing public body pension schemes: pension age [j28]**

**32.—**(1) A public body pension scheme established before the coming into force of this section may include—

(a) provision securing that the normal and deferred pension age of a person under the scheme is—

(i) the same as the person's state pension age, or

(ii) 65, if that is higher, and

(b) provision securing that changes in the person's normal or deferred pension age occurring in consequence of provision under paragraph (a) apply in relation to relevant accrued benefits (as well as other benefits).

(2) In subsection (1)(b) “relevant accrued benefits”, in relation to a person and a scheme, means benefits accrued after the coming into force of the provision under subsection (1) which may be paid to or in respect of the person under the scheme and to which the normal or deferred pension age is relevant.

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- “the affirmative procedure” has the meaning given in section 34;
- “body” includes an unincorporated body or organisation of persons (for example, a committee or board of trustees);
- “career average revalued earnings scheme” has the meaning given in section 8(4);
- “civil servants” has the meaning given in Schedule 1;
- “compensation benefits” means benefits by way of compensation for loss of office or employment;
- “connected”, in relation to a scheme under section 1 and another statutory pension scheme, or a new public body pension scheme and another statutory pension scheme, has the meaning given by section 4(6);
- “defined benefits scheme”: a pension scheme is a “defined benefits scheme” if or to the extent that the benefits that may be provided under the scheme are not money purchase benefits (within the meaning of the Pension Schemes (Northern Ireland) Act 1993 (c.49)) or injury and compensation benefits;
- “defined contributions scheme”: a pension scheme is a “defined contributions scheme” if or to the extent that the benefits that may be provided under the scheme are money purchase benefits (within the meaning of the Pension Schemes (Northern Ireland) Act 1993 (c. 49));
- “deferred pension age” has the meaning given in section 10(5);
- “earnings” includes any remuneration or profit derived from an employment;
- “employer”, in relation to a pension scheme, means—
  - (a) any employer of persons to whom the scheme relates,
  - (b) the person responsible for the remuneration of an office-holder to whom the scheme relates, or
  - (c) such other persons (in addition to, or instead of, any person falling within paragraph (a) or (b)) as scheme regulations or (in the case of a public body pension scheme) the rules of the scheme may provide;
- “existing scheme” has the meaning given in section 18(2);
- “final salary”, in relation to a person to or in respect of whom a pension under a pension scheme is payable, means the person’s pensionable earnings, or highest, average or representative pensionable earnings, in a specified period ending at, or defined by reference to, the time when the person’s pensionable service in relation to that scheme terminates;
- “final salary scheme”: a pension scheme is a “final salary scheme” if entitlement to the pension payable to or in respect of a person which is based on the pensionable service of that person is or may be determined to any extent by reference to the person’s final salary;
- “fire and rescue workers” has the meaning given in Schedule 1;
- “holders of judicial office has the meaning given in Schedule 1;

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- “injury benefits” means benefits by way of compensation for incapacity or death as a result of injury or illness;
- “injury or compensation scheme”: a pension scheme is an “injury or compensation scheme” if it provides only for injury or compensation benefits (or both);
- “health service workers” has the meaning given in Schedule 1;
- “legislation” means primary or secondary legislation;
- “local government workers” has the meaning given in Schedule 1;
- “members of the police service” has the meaning given in Schedule 1;
- “normal pension age” has the meaning given in section 10(5);
- “pension board” has the meaning given in section 5(8);
- “pension scheme” means a scheme for the payment of pensions or other benefits to or in respect of persons with service of a particular description;
- “pensionable earnings”, in relation to a pension scheme and a member of it, means earnings by reference to which a pension or other benefits under the scheme are calculated;
- “pensionable service”, in relation to a pension scheme, means service which qualifies a person to a pension or other benefits under that scheme;
- “primary legislation” means Northern Ireland legislation or any provision of an Act of Parliament of the United Kingdom that would be within the legislative competence of the Assembly were that provision contained in an Act of the Assembly;
- “public authority” means—
- (a) a statutory body or the holder of a statutory office, or
  - (b) a person exercising a statutory function;
- “public body pension scheme” and “new public body pension scheme” have the meanings given in section 30(4);
- “responsible authority”, in relation to a scheme under section 1, has the meaning given by section 2(2);
- “scheme” includes arrangements of any description;
- “scheme advisory board” has the meaning given in section 7(6);
- “scheme manager”, in relation to a scheme under section 1, has the meaning given in section 4(2);
- “scheme regulations” has the meaning given in section 1(4);
- “secondary legislation” means an instrument made under primary legislation;
- “staff”, in relation to a body, includes any employee or officer of the body;
- “state pension age” has the meaning given in section 10(5);
- “statutory body” and “statutory office” mean a body or office established under any legislation;
- “statutory function” means a function conferred by any legislation;
- “statutory pension scheme” means—
- (a) a pension scheme which is established by or under any legislation, and
  - (b) a public body pension scheme which is not so established;

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“the Superannuation Order” means the Superannuation (Northern Ireland) Order 1972;

“teachers” has the meaning given in Schedule 1.

**Regulations, orders and directions [j30]**

34.—(1) In this Act, “the affirmative procedure” means, in relation to regulations or an order, that the regulations or order may not be made unless a draft of the statutory rule containing them or it has been laid before, and approved by resolution of, the Assembly.

(2) Directions given under this Act by the Department of Finance and Personnel may be varied or revoked.

*Final*

**Financial provision [j30a]**

35.—(1) There shall be paid out of money provided by the Assembly—

- (a) any expenditure incurred for the provision, under scheme regulations made by the Department of Justice, of any pension or other sum payable to or in respect of persons who have been holders of judicial office, and
- (b) any increase attributable to such provision in the sums payable under or by virtue of any other statutory provision out of money so provided.

**Commencement [j31]**

36.—(1) The following provisions of this Act come into force on the day on which this Act is passed—

- (a) section 29 and Schedule 9 (existing schemes for civil servants: extension of access);
- (b) sections 33 to 35, this section and section 37.

(2) The other provisions of this Act come into force on such day or days as the Department of Finance and Personnel may by order appoint.

(3) An order under subsection (2) may—

- (a) appoint different days for different purposes;
- (b) make transitional, transitory or saving provision.

**Short title [j32]**

37. This Act may be cited as the Public Service Pensions Act (Northern Ireland) 2013.

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SCHEDULES

SCHEDULE 1

Section 1(3).

PERSONS IN PUBLIC SERVICE: DEFINITIONS [S1]

*Civil servants*

1. In this Act, “civil servants” means persons employed in the civil service of Northern Ireland.

*Holders of judicial office*

2.—(1) In this Act, “holders of judicial office” means holders of an office specified in an order made by the Department of Justice.

(2) An order under this paragraph is subject to negative resolution.

*Local government workers*

3.—(1) In this Act, “local government workers” means persons employed in local government service and specified in scheme regulations.

(2) In this paragraph, “local government service” means service specified in scheme regulations.

*Teachers*

4. In this Act, “teachers” includes persons who are employed otherwise than as teachers—

(a) in a capacity connected with education which to a substantial extent involves the control or supervision of teachers, or

(b) in employment which involves the performance of duties in connection with the provision of education or services ancillary to education, and who are specified in scheme regulations.

*Health service workers*

5.—(1) In this Act, “health service workers” means persons engaged in health services and specified in scheme regulations.

(2) In this paragraph, “health services” means services specified in scheme regulations.

*Fire and rescue workers*

6. In this Act, “fire and rescue workers” means persons employed by the Northern Ireland Fire and Rescue Service Board.

*Members of the police service*

7. In this Act “members of the police service” means—

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- (a) police officers, police trainees and police reserve trainees within the meaning of section 77 of the Police (Northern Ireland) Act 2000 (c.32), and
- (b) police cadets appointed under section 42 of that Act.

Section 2(1).

SCHEDULE 2

RESPONSIBLE AUTHORITIES [S2]

*Civil servants*

- 1. Scheme regulations for civil servants may be made by the Department of Finance and Personnel.

*Holders of judicial office*

- 2. Scheme regulations for holders of judicial office may be made by the Department of Justice.

*Local government workers*

- 3. Scheme regulations for local government workers may be made by the Department of the Environment.

*Teachers*

- 3. Scheme regulations for teachers may be made by the Department of Education.

*Health service workers*

- 4. Scheme regulations for health service workers may be made by the Department of Health, Social Services and Public Safety.

*Fire and rescue workers*

- 5. Scheme regulations for fire and rescue workers may be made by Department of Health, Social Services and Public Safety.

*Members of the police service*

- 6. Scheme regulations for members of the police service may be made by the Department of Justice.

Section 3(2)(a).

SCHEDULE 3

SCOPE OF SCHEME REGULATIONS: SUPPLEMENTARY MATTERS [S3]

- 1. Eligibility and admission to membership.

This includes—

- (a) specifying who, of the persons in relation to whom the scheme regulations may be made, is eligible for membership;
- (b) conditions of eligibility.

- 2. The benefits which must or may be paid under the scheme.

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Those benefits may include—

- (a) pensions and other benefits on leaving service to which the scheme relates (whether before, at or after normal pension age);
- (b) benefits payable on death (in service or otherwise);
- (c) compensation payments (including for death, injury or redundancy);
- (d) discretionary payments and concessions.

3. The persons to whom benefits under the scheme are payable.

Those persons may include—

- (a) active, deferred and pensioner members of the scheme;
- (b) pension credit members of the scheme;
- (c) widows, widowers, surviving civil partners and surviving dependants.

4. The conditions subject to which benefits are payable.

5. The assignment of benefits, including restrictions on assignment.

6. The forfeiture or suspension of benefits.

7. The recovery of overpaid benefits.

8. The exclusion of double recovery of compensation or damages.

This includes—

- (a) exclusion or modification of rights to compensation or damages in respect of any matter in a case where benefits are paid under the scheme in respect of the same matter;
- (b) exclusion or modification of rights to benefits under the scheme where compensation or damages are received in respect of the same matter from another source.

9. Contributions, including—

- (a) the making of contributions by employers and members;
- (b) contribution rates;
- (c) interest on late payment of contributions;
- (d) the return of contributions (with or without interest).

10. The payment or receipt of transfer values or other lump sum payments for the purpose of creating or restoring rights to benefits (under the scheme or otherwise).

11. Pension funds (for schemes which have them).

This includes the administration, management and winding-up of any pension funds.

12. The administration and management of the scheme, including—

- (a) the giving of guidance or directions by the responsible authority to the scheme manager (where those persons are different);
- (b) the person by whom benefits under the scheme are to be provided;
- (c) the provision or publication of information about the scheme.

13. The delegation of functions under scheme regulations, including—

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- (a) delegation of functions by the scheme manager or responsible authority;
  - (b) further delegation of functions by any delegatee.
14. The payment by an employer of—
- (a) any costs relating to the administration of the scheme;
  - (b) any costs incurred because of a failure by the employer to comply with the employer's obligations under the scheme;
  - (c) interest relating to payments to be made by virtue of this paragraph.
15. The resolution of disputes and appeals (including the referral to a court of law of questions of law which under the scheme fall to be determined by the responsible authority).

Section 17(1).

## SCHEDULE 4

## REGULATORY OVERSIGHT [S4]

1. The Pensions (Northern Ireland) Order 2005 (NI 1) is amended as follows.
- 2.—(1) Article 2 (general interpretation) is amended as follows.
  - (2) In paragraph (2), after the definition of “occupational pension scheme” insert—
 

““pension board” has the same meaning as in the Public Service Pensions Act (Northern Ireland) 2013 (see section 5 of that Act);”.
  - (3) After the definition of “professional adviser” in that paragraph insert—
 

““public service pension scheme” means, subject to paragraph (6A)—

    - (a) a scheme under section 1 of the Public Service Pensions Act (Northern Ireland) 2013 (new public service schemes);
    - (b) a new public body pension scheme (within the meaning of that Act);
    - (c) any statutory pension scheme which is connected with a scheme referred to in paragraph (a) or (b) (and for this purpose “statutory pension scheme” and “connected” have the meanings given in that Act);”.
  - (4) After the definition of “the Regulator” in that paragraph insert—
 

““scheme manager”, in relation to a public service pension scheme, has the same meaning as in the Public Service Pensions Act (Northern Ireland) 2013 (see section 4 of that Act);”.
  - (5) After paragraph (6) insert—
 

“(6A) A scheme which would otherwise fall within the definition of “public service pension scheme” in paragraph (2) does not fall within that definition if—

    - (a) it is an injury or compensation scheme (within the meaning of the Public Service Pensions Act (Northern Ireland) 2013), or
    - (b) it is specified in an order made by the Department after consulting the Department of Finance and Personnel.”.
- 3.—(1) Article 9 (improvement notices) is amended as follows.

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- (2) In paragraph (3)(a), after “85” insert “or 85A”.
- (3) In paragraph (7)—
  - (a) in sub-paragraph (c), the final “or” is repealed;
  - (b) at the end insert “or
    - (e) section 5(5) (pension board: conflicts of interest), 6 (pension board: information), 14 (information about benefits) or 16 (records) of the Public Service Pensions Act (Northern Ireland) 2013.”.
- 4. After Article 10 insert—
 

**“Appointment of skilled person to assist public service pension scheme**

10A.—(1) The Regulator may, if it considers it desirable for the purpose of ensuring compliance with pensions legislation, appoint a person to assist the pension board of a public service pension scheme in the discharge of its functions.

(2) A person appointed under this Article may be any person appearing to the Regulator to have the necessary skills.

(3) The pension board of a public service pension scheme must have regard to the advice of a person appointed under this Article.

(4) The costs of a person appointed under this Article are to be met by the scheme manager of the scheme.

(5) In paragraph (1) “pensions legislation” has the same meaning as in Article 9.”.
- 5.—(1) In Article 13 (power of the Regulator to recover unpaid contributions), paragraph (3) is amended as follows.
  - (2) In the definition of “due date”—
    - (a) in paragraph (b), the final “and” is repealed;
    - (b) after paragraph (c) insert “and
      - (d) in relation to employer contributions payable under a public service pension scheme, the date on which the contributions are due under the scheme;”.
  - (3) In the definition of “employer contribution”—
    - (a) in paragraph (a)—
      - (i) after “occupational pension scheme” insert “other than a public service pension scheme”;
      - (ii) the final “and” is repealed;
    - (b) after paragraph (b) insert “and
      - (c) in relation to a public service pension scheme, means any contributions payable under the scheme by the employer.”.
- 6. In Article 65 (duty to report breaches of the law), in paragraph (1)—
  - (a) after sub-paragraph (a) insert—

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- “(aa) a member of the pension board of a public service pension scheme;”;
- (b) in sub-paragraph (b), for “such a scheme” substitute “an occupational or personal pension scheme”.
7. After Article 65 insert—

*“Reporting late payment of employer contributions***Duty to report late payment of employer contributions**

65A.—(1) Where—

- (a) any amount payable under a public service pension scheme by or on behalf of an employer in relation to the scheme by way of contributions is not paid on or before the date on which it is due under the scheme, and
- (b) the scheme manager has reasonable cause to believe that the failure is likely to be of material significance to the Regulator in the exercise of any of its functions,
- the scheme manager must give a written report of the matter to the Regulator as soon as reasonably practicable.

(2) Subject to Article 283 (protected items), no duty to which a person is subject is to be regarded as contravened merely because of any information or opinion contained in a written report under this Article.

(3) Article 10 of the 1995 Order (civil penalties) applies to any person who, without reasonable excuse, fails to comply with an obligation imposed on him by this Article.”.

8.—(1) Article 66 (reports by skilled persons) is amended as follows.

(2) In paragraph (1)—

- (a) in sub-paragraph (b), the final “or” is repealed;
- (b) after sub-paragraph (b) insert—
- “(ba) in the case of a work-based scheme which is a public service pension scheme, a member of the pension board of the scheme, or”;
- (c) in sub-paragraph (c), for “such a scheme” substitute “a work-based pension scheme”.

9. In Article 67 (provision of information), in paragraph (2), after sub-paragraph (a) insert—

“(aa) a member of the pension board of a public service pension scheme,”.

10. In Article 68 (inspection of premises), in paragraph (2)—

- (a) after sub-paragraph (d) insert—
- “(da) section 16 of the Public Service Pensions Act (Northern Ireland) 2013;”;
- (b) in sub-paragraph (e), for “(d)” substitute “(da)”.

11. In Article 84 (reports), at the end insert—

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“(4) Before making a report under this Article which relates to a public service pension scheme, the Regulator must notify the scheme manager.”.

12. After Article 84 insert—

**“Reports about misappropriation, etc. in public service pension schemes**

84A.—(1) If the Regulator has reasonable grounds to suspect or believe that a member of the pension board of a public service pension scheme—

- (a) has misappropriated any assets of the scheme or is likely to do so, or
- (b) has a conflict of interest in relation to investment of assets of the scheme,

the Regulator must report the matter to the scheme manager.

(2) For the purposes of the law of defamation, the reporting of any matter by the Regulator under paragraph (1) is privileged unless the reporting is shown to be made with malice.

(3) For the purposes of paragraph (1)(b) a person does not have a conflict of interest in relation to investment of assets merely by virtue of membership of the scheme.”.

13.—(1) Article 85 (codes of practice) is amended as follows.

(2) In paragraph (4), after “provision of a code of practice” insert “issued under this Article”.

(3) In paragraph (7), at the end insert “under this Article”.

(4) At the end of the Article insert—

“(8) The Regulator may not issue codes of practice under this Article in relation to a public service pension scheme (but see Article 85A).”.

14. After Article 85 insert—

**“Codes of practice: public service pension schemes**

85A.—(1) The Regulator may, in relation to public service pension schemes, issue codes of practice—

- (a) containing practical guidance in relation to the exercise of functions under relevant pensions legislation, and
- (b) regarding the standards of conduct and practice expected from those who exercise such functions.

(2) The Regulator must issue one or more such codes of practice relating to the following matters—

- (a) the discharge of the duties imposed by Articles 65 and 65A (duties to report breaches of the law and late payment of employer contributions);
- (b) the obligations imposed by Article 225A (requirements for knowledge and understanding: pension boards of public service pension schemes);

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- (c) the discharge of the duty imposed by Article 226B (internal controls);
  - (d) the discharge of duties imposed under section 109 of the Pension Schemes Act (disclosure of information to members);
  - (e) the discharge of the duty imposed by Article 49(9)(b) of the 1995 Order (duty of trustees or managers of occupational pension schemes to report material failures by employers to pay contributions deducted from employee's earnings timeously);
  - (f) the discharge of the duty imposed by Article 50 of the 1995 Order (internal dispute resolution);
  - (g) the discharge of duties imposed under section 5(5) of the Public Service Pensions Act (Northern Ireland) 2013 (pension board: conflicts of interest and representation) and other duties relating to conflicts of interest;
  - (h) the discharge of duties imposed by virtue of section 6 (pension board: information) of that Act and other duties relating to the publication of information about governance and administration;
  - (i) the discharge of duties imposed under section 14 of that Act (information about benefits);
  - (j) the discharge of duties imposed under section 16 (records) of that Act and other duties relating to record-keeping;
  - (k) such other matters as may be prescribed for the purposes of this Article.
- (3) The Regulator may from time to time revise the whole or any part of a code of practice issued under this Article and issue that revised code.
- (4) Subject to Article 9(3)(a) and (8) (power for improvement notice to direct that person complies with code of practice and civil penalties for failure to comply), a failure on the part of any person to observe any provision of a code of practice issued under this Article does not of itself render that person liable to any legal proceedings.
- (5) A code of practice issued under this Article is admissible in evidence in any legal proceedings (within the meaning of Article 85) and, if any provision of such a code appears to the court or tribunal concerned to be relevant to any question arising in the proceedings, it must be taken into account in determining that question.
- (6) A code of practice issued under this Article may be—
- (a) combined with a code of practice issued under Article 85;
  - (b) combined with one or more other codes of practice issued under this Article.
- (7) A code of practice issued under this Article may relate to all public service pension schemes or any one or more of them.
- (8) In this Article, “relevant pensions legislation” means—
- (a) the statutory provisions constituting “pensions legislation” within the meaning of Article 85, and

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(b) sections 5(5) (pension board: conflicts of interest and representation), 6 (pension board: information), 14 (information about benefits) and 16 (records) of the Public Service Pensions Act (Northern Ireland) 2013.

(9) Articles 86 and 87 make provision about the procedure to be followed when a code of practice is issued or revoked under this Article.”.

15.—(1) Article 86 (procedure for codes) is amended as follows.

(2) In paragraph (1), after “code of practice” insert “under Article 85 or 85A”.

(3) In paragraphs (4)(a) and (9), after “85” insert “or 85A”.

16. In Article 87 (revocation of codes), in paragraph (1), after “code of practice” insert “under Article 85 or 85A”.

17. In Article 88 (procedure for regulatory functions), in paragraph (2), after sub-paragraph (b) insert—

“(ba) the power to appoint a skilled person in relation to a public service pension scheme under Article 10A,”.

18. In Article 138 (requirement to wind up schemes with sufficient assets), in paragraph (14), after “public service pension scheme” insert “(within the meaning of the Pension Schemes Act)”.

19. After Article 225 insert—

**“Requirement for knowledge and understanding: pension boards of public service pension schemes**

225A.—(1) This Article applies to every individual who is a member of the pension board of a public service pension scheme.

(2) An individual to whom this Article applies must be conversant with—

(a) the rules of the scheme, and

(b) any document recording policy about the administration of the scheme which is for the time being adopted in relation to the scheme.

(3) An individual to whom this Article applies must have knowledge and understanding of—

(a) the law relating to pensions, and

(b) such other matters as may be prescribed.

(4) The degree of knowledge and understanding required by paragraph (3) is that appropriate for the purposes of enabling the individual properly to exercise the functions of a member of the pension board.”.

20. In Article 226A (requirement for internal controls), in paragraph (3)—

(a) before sub-paragraph (a) insert—

“(za) a public service pension scheme;”;

(b) in sub-paragraph (a) for “a scheme” substitute “any other scheme”.

21. After Article 226A insert—

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**“Requirement for internal controls: public service pension schemes**

226B.—(1) The scheme manager of a public service pension scheme must establish and operate internal controls which are adequate for the purpose of securing that the scheme is administered and managed—

- (a) in accordance with the scheme rules, and
- (b) in accordance with the requirements of the law.

(2) Nothing in this Article affects any other obligations of the scheme manager to establish or operate internal controls, whether imposed by or by virtue of any statutory provision, the scheme rules or otherwise.

(3) In this Article “internal controls” has the same meaning as in Article 226A.”.

Section 18.

SCHEDULE 5

EXISTING PENSION SCHEMES [S5]

*Civil servants*

1. A scheme under Article 3 of the Superannuation Order.

*Exceptions:* injury benefits and compensation benefits

*Holders of judicial office*

2. A scheme constituted by or made under any provision of Part 1 or section 19 of the Judicial Pensions and Retirement Act 1993 (c.8) so far as relating to payment of pension benefits to or in respect of—

- (a) the President of appeals tribunals (within the meaning of Chapter 1 of Part 2 of the Social Security (Northern Ireland) Order 1998 (NI 10)) appointed under Article 6 of that Order, or a member of a panel constituted under Article 7(1) of that Order who is appointed to serve as a member of that panel and is a barrister or solicitor;
- (b) the President or Vice-President of the Industrial Tribunals and the Fair Employment Tribunal, appointed under Article 82 of the Fair Employment and Treatment (Northern Ireland) Order 1998 (NI 21);
- (c) the President or other member of the Lands Tribunal.

*Local government workers*

3. Regulations under Article 9 of the Superannuation Order.

*Exception:* injury benefits

*Teachers*

4. Regulations under Article 11 of the Superannuation Order.

*Exception:* injury benefits

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*Health service workers*

5. Regulations under Article 12 of the Superannuation Order.

*Exception:* injury benefits

*Fire and rescue workers*

6. An order under Article 10 of the Fire Services (Northern Ireland) Order 1984 (NI 11) (continued by Article 60 of the Fire and Rescue Services (Northern Ireland) Order 2006 (NI 9)).

*Exceptions:* injury benefits and compensation benefits

*Members of the police service*

7. A scheme under section 25(2)(k) or 26(2)(g) of the Police (Northern Ireland) Act 1998 (c. 32).

*Exception:* injury benefits

Section 19.

SCHEDULE 6

EXISTING INJURY AND COMPENSATION SCHEMES [S6]

*Civil servants*

1. A scheme under Article 3 of the Superannuation Order.

*Specified benefits:* injury benefits and compensation benefits

*Local government workers*

2. Regulations under Article 9 of the Superannuation Order.

*Specified benefits:* injury benefits

*Teachers*

3. Regulations under Article 11 of the Superannuation Order.

*Specified benefits:* injury benefits

*Health service workers*

4. Regulations under Article 12 of the Superannuation Order.

*Specified benefits:* injury benefits

*Fire and rescue workers*

5. Article 10 of the Fire Services (Northern Ireland) Order 1984.

*Specified benefits:* injury benefits and compensation benefits

*Members of the police service*

6. A scheme under section 25(2) or 26(2) of the Police (Northern Ireland) Act 1998.

*Specified benefits:* injury benefits

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*Compensation schemes for loss of office, etc.*

7. Regulations under Article 19 of the Superannuation Order.

Sections 20 and  
31.

SCHEDULE 7

FINAL SALARY LINK [S7]

*Persons who remain in an old scheme for past service*

1.—(1) This paragraph applies in a case where—

- (a) a person is a member of an existing scheme to which section 18(1) applies or a scheme to which sections 31(2) applies (the “old scheme”) by virtue of his or her pensionable service for that scheme (“the old scheme service”), and
- (b) the person is also a member of a scheme under section 1 or a new public body pension scheme (“the new scheme”) by virtue of his or her pensionable service for that scheme (“the new scheme service”).

(2) If, in a case where this paragraph applies—

- (a) the old scheme service and the new scheme service are continuous, and
- (b) the person’s employer in relation to the old scheme service is the person’s employer in relation to the new scheme service (or any other employer in relation to the new scheme),

then, in determining the person’s final salary for any purpose of the old scheme—

- (i) the old scheme service is to be regarded as having ended when the new scheme service ended, and
- (ii) such earnings as scheme regulations for the new scheme may specify, being earnings derived by the person from the new scheme, are to be regarded as derived from the old scheme service (subject to subparagraph (3)).

(3) The amount of the earnings that are to be regarded as derived from the old scheme service must not be materially less than the amount of the earnings that would have been the person’s pensionable earnings derived from that service had the new scheme service been old scheme service.

*Persons whose benefits under an old scheme are transferred to another closed scheme*

2.—(1) This paragraph applies in a case where—

- (a) a person has been a member of an existing scheme to which section 18(1) applies or a scheme to which section 31(2) applies (“the old scheme”) by virtue of his or her pensionable service for that scheme (“the old scheme service”),
- (b) the person is also a member of a scheme under section 1 or a new public body pension scheme (“the new scheme”) by virtue of his or her pensionable service for that scheme (“the new scheme service”),
- (c) the person’s rights to benefit under the old scheme have been transferred after the date referred to in section 18(1) or section 31(2) to an existing

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scheme to which section 18(1) applies or a scheme to which section 31(2) applies (“the transfer scheme”), and

- (d) the old scheme service is treated, by virtue of that transfer, as pensionable service of the person for the transfer scheme (“the deemed transfer scheme service”).

(2) If, in a case where this paragraph applies—

- (a) the deemed transfer scheme service and the new scheme service are continuous, and
- (b) the person’s employer in relation to the new scheme service is an employer in relation to the transfer scheme,

then, in determining the person’s final salary for any purpose of the transfer scheme—

- (i) the deemed transfer scheme service is to be regarded as having ended when the new scheme service ended, and
- (ii) such earnings as scheme regulations for the new scheme may specify, being earnings derived by the person from the new scheme service, are to be regarded as derived from the deemed transfer scheme service (subject to sub-paragraph (3)).

(3) The amount of the earnings that are to be regarded as derived from the deemed transfer scheme service must not be materially less than the amount of the earnings that would have been the person’s pensionable earnings derived from that service had the new scheme service been deemed transfer scheme service.

(4) In sub-paragraph (1)(c), the reference to a transfer of rights to benefit includes the making of a transfer payment in respect of such rights.

*Continuity of employment*

3.—(1) For the purposes of paragraphs 1(2)(a) and 2(2)(a), there are to be disregarded—

- (a) any gap in service where the person was in pensionable public service;
- (b) a single gap of service where the person was not in pensionable public service, if that gap does not exceed 5 years;
- (c) two or more gaps in service where the person was not in pensionable public service, if none of the gaps exceeds 5 years.

(2) In this paragraph, “pensionable public service” means service which is pensionable service in relation to—

- (a) a scheme under section 1, or
- (b) a new public body pension scheme.

*Movement between new schemes*

4. Where the condition in sub-paragraph (1)(b) of paragraph 1 or 2 applies by virtue of periods of pensionable service for two or more different schemes—

- (a) identify the last period of pensionable service by virtue of which that paragraph applies and the scheme to which that service relates, and
- (b) disregard, for the purposes of that sub-paragraph, periods of pensionable service relating to other schemes.

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*Final salary link not to apply again to a pension in payment*

5.—(1) Scheme regulations may provide that where a pension in payment under a scheme to which section 18(1) or 31(2) applies has been calculated by reference to this Schedule, the pension cannot be recalculated by reference to this Schedule where there is a subsequent period of pensionable public service (within the meaning of paragraph 3).

(2) Provision made under sub-paragraph (1) may in particular be made by amending the scheme under which the pension is in payment.

Section 27.

## SCHEDULE 8

## CONSEQUENTIAL AND MINOR AMENDMENTS [S8]

*Lands Tribunal and Compensation Act (Northern Ireland) 1964 (c.29)*

1. In section 2 of the Lands Tribunal and Compensation Act (Northern Ireland) 1964 (terms of appointment and remuneration, etc., of members), for subsection (5A) substitute—

“(5A) Subsection (5), so far as relating to allowances and gratuities by way of superannuation, shall not have effect in relation to persons—

- (a) to whom Part 1 of the Judicial Pensions and Retirement Act 1993 applies, or
- (b) to whom a pension is payable under a scheme made by the Department of Justice under section 1 of the Public Service Pensions Act (Northern Ireland) 2013 by virtue of section 1 (2)(b) (holders of judicial office),

except to the extent provided by or under those Acts.”.

*Pensions (Increase) Act (Northern Ireland) 1971 (c. 35)*

2. After section 8 of the Pensions (Increase) Act (Northern Ireland) 1971 insert—

**“Section 8(2): references to “service”**

8A.—(1) In a case where—

- (a) paragraph 1 or 2 of Schedule 7 to the 2013 Act (final salary link for persons who remain in old scheme for past service) applies in relation to a person, and
- (b) the person’s final salary falls to be determined by reference to that paragraph,

references in section 8(2) above to the service in respect of which a pension is payable include the person’s new scheme service (within the meaning of Schedule 7 to the 2013 Act).

(2) In a case where—

- (a) a person is a member of a relevant old scheme by virtue of pensionable service for that scheme (“the relevant old scheme service”),

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- (b) the person is also a member of a scheme under section 1 of the 2013 Act or a new public body pension scheme (“the new scheme”) by virtue of pensionable service for that scheme (“the new scheme service”),
- (c) the relevant old scheme service and the new scheme service are continuous, and
- (d) the person’s employer in relation to the relevant old scheme service is the person’s employer in relation to the new scheme service (or any other employer in relation to the new scheme),

references in section 8(2) above to the service in respect of which a pension is payable include the person’s new scheme service.

(3) In this section—

- (a) “relevant old scheme” means a career average revalued earnings scheme (within the meaning of the 2013 Act) to which section 18(1) or 31(2) of that Act applies (restriction of benefits under existing schemes);
- (b) “employer”, “new public body pension scheme” and “pensionable service” have the same meanings as in that Act.

(4) For the purposes of subsection (2)—

- (a) paragraphs 3 and 4 of Schedule 7 to the 2013 Act (continuity of employment, etc.) apply as they apply for the purposes of paragraphs 1(2) and 2(2) of that Schedule;
- (b) regulations under section 1 of the 2013 Act (in the case of a new scheme under that section) or rules (in the case of a new public body pension scheme) may provide that where a pension is in payment under a relevant old scheme, references in section 8(2) above to the service in respect of which a pension is payable do not include any subsequent period of pensionable service in relation to a scheme under section 1 of the 2013 Act or a new public body pension scheme.

(5) Provision made under subsection (4)(b) may in particular be made by amending the relevant old scheme.

(6) In this section, “the 2013 Act” means the Public Service Pensions Act (Northern Ireland) 2013.”.

3. Schedule 2 to the Pensions (Increase) Act (Northern Ireland) 1971 (official pensions) is amended as follows.

4. After paragraph 2 insert—

“2A. A pension payable under a scheme made by the Department of Finance and Personnel under section 1 of the Public Service Pensions Act (Northern Ireland) 2013 by virtue of section 1(2)(a) of that Act (civil servants).”.

5. After paragraph 3A insert—

“3B. A pension payable by the Department of Education under a scheme made by the Department under section 1 of the Public Service

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Pensions Act (Northern Ireland) 2013 by virtue of section 1(2)(d) of that Act (teachers).”.

## 6. Before paragraph 6 insert—

“5A. A pension payable by the Department of Justice under a scheme made by the Department under section 1 of the Public Service Pensions Act (Northern Ireland) 2013 by virtue of section 1(2)(g) of that Act (members of police service).

5B. A pension payable under a scheme made by the Department of Justice under section 1 of the Public Service Pensions Act (Northern Ireland) 2013 by virtue of section 1(2)(b) of that Act (holders of judicial office).”.

## 7. After paragraph 7A there is inserted—

“7B. A pension payable by the Department of Health, Social Services and Public Safety under a scheme made by the Department under section 1 of the Public Service Pensions Act (Northern Ireland) 2013 by virtue of section 1(2)(e) of that Act (health service workers).”.

## 8. After paragraph 14A insert—

“14B. A pension payable under a defined benefits scheme, within the meaning of the Public Service Pensions Act (Northern Ireland) 2013, made by the Department of the Environment under section 1 of that Act by virtue of section 1(2)(c) of that Act (local government workers).”.

## 9. After paragraph 16 insert—

“16A. A pension payable under a defined benefits scheme, within the meaning of the Public Service Pensions Act (Northern Ireland) 2013, made by the Department of Health, Social Services and Public Safety under section 1 of that Act by virtue of section 1(2)(f) of that Act (fire and rescue workers).”.

*Superannuation (Northern Ireland) Order 1972 (NI 10)*

## 10. The Superannuation Order is amended as follows.

## 11. In Article 3 (superannuation schemes as respects civil servants, etc.), after paragraph (1A) insert—

“(1B) Paragraph (1) is subject to sections 18 and 19 of the Public Service Pensions Act (Northern Ireland) 2013 (restrictions on benefits provided under existing schemes).”.

## 12. In Article 9 (superannuation of persons employed in local government service, etc.), after paragraph (1) insert—

“(1A) Paragraph (1) is subject to sections 18 and 19 of the Public Service Pensions Act (Northern Ireland) 2013 (restrictions on benefits provided under existing schemes).”.

## 13. In Article 11 (superannuation of teachers), after paragraph (1) insert—

“(1A) Paragraph (1) is subject to sections 18 and 19 of the Public Service Pensions Act (Northern Ireland) 2013 (restrictions on benefits provided under existing schemes).”.

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14. In Article 12 (superannuation of persons engaged in health services, etc.), after paragraph (1) insert—

“(1A) Paragraph (1) is subject to sections 18 and 19 of the Public Service Pensions Act (Northern Ireland) 2013 (restrictions on benefits provided under existing schemes).”.

15. In Article 19 (compensation for loss of office, etc.), after paragraph (1) insert—

“(1A) Paragraph (1) is subject to section 19 of the Public Service Pensions Act (Northern Ireland) 2013 (restrictions on benefits provided under existing schemes).”.

*Fire Services (Northern Ireland) Order 1984 (NI 11)*

16. In Article 10 of the Fire Services (Northern Ireland) Order 1984 (continued by Article 60 of the Fire and Rescue Services (Northern Ireland) Order 2006 (2006 NI 9)), after paragraph (3) insert—

“(3A) Paragraphs (1) to (3) are subject to sections 18 and 19 of the Public Service Pensions Act (Northern Ireland) 2013 (restrictions on benefits provided under existing schemes).”.

*Judicial Pensions and Retirement Act 1993 (c. 8)*

17. In section 1 of the Judicial Pensions and Retirement Act 1993, after subsection (1A) (as inserted by Schedule 8 to the Public Service Pensions Act 2013 (c. 25)), insert—

“(1B) This Part is subject to section 18 of the Public Service Pensions Act (Northern Ireland) 2013 (Northern Ireland provision restricting benefits provided under existing schemes).”.

18. In section 11 of that Act (provision against pensions under two or more judicial pension schemes), after subsection (5) (as inserted by Schedule 8 to the Public Service Pensions Act 2013), add—

“(6) This section does not prevent a scheme under section 1 of the Public Service Pensions Act (Northern Ireland) 2013 having effect in relation to a person.”.

*Pension Schemes (Northern Ireland) Act 1993 (c. 49)*

19. The Pension Schemes (Northern Ireland) Act 1993 is amended as follows.

20.—(1) Section 67 (short service benefit) is amended as follows.

(2) In subsection (3), for “subsection (4)” substitute “subsections (4) and (5A)”.

(3) After subsection (5) insert—

“(5A) Subsection (3) does not apply in relation to a scheme under section 1 of the Public Service Pensions Act (Northern Ireland) 2013.”.

21. In section 79 (scope of Chapter 2: revaluation of accrued benefits), after subsection (1A) insert—

“(1B) The reference in subsection (1)(a)(iii) to normal pension age is to be read, in relation to a person who is an active or deferred member of a

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scheme under section 1 or section 31(7) of the Public Service Pensions Act (Northern Ireland) 2013, as—

- (a) the member's normal pension age within the meaning of that Act, or
- (b) the member's deferred pension age within the meaning of that Act, if that is later.

In this subsection "active member" and "deferred member", in relation to such a scheme, have the meanings given by Article 121(1) of the Pensions (Northern Ireland) Order 1995."

*Police (Northern Ireland) Act 1998 (c. 32)*

22. The Police (Northern Ireland) Act 1998 is amended as follows.

23. In section 25 (regulations for Police Service of Northern Ireland), after subsection (2) insert—

"(2A) Subsection (2)(k) is subject to sections 18 and 19 of the Public Service Pensions Act (Northern Ireland) 2013 (restrictions on benefits provided under existing schemes)."

24. In section 26 (regulations for reserve constables in Northern Ireland), after subsection (2) insert—

"(2A) Subsection (2)(g) is subject to sections 18 and 19 of the Public Service Pensions Act (Northern Ireland) 2013 (restrictions on benefits provided under existing schemes)."

*Social Security (Northern Ireland) Order 1998 (NI 10)*

25. In Schedule 1 to the Social Security (Northern Ireland) Order 1998 (appeals tribunals: supplementary provisions), after paragraph 3 insert—

"(3A) Paragraph 2 and 3, so far as relating to pensions and allowances by way of superannuation, shall not have effect in relation to persons to whom a pension is payable under a scheme made by the Department of Justice under section 1 of the Public Service Pensions Act (Northern Ireland) 2013 by virtue of section 1(2)(b) (holders of judicial office), except to the extent provided by or under that Act."

Section 29.

## SCHEDULE 9

EXISTING SCHEMES FOR CIVIL SERVANTS: EXTENSION OF ACCESS  
[S9]

1. The Superannuation Order is amended as follows.

2. In Article 3 (superannuation schemes as respects civil servants, etc.), after paragraph (3) insert—

"(3A) This Article also applies to persons serving in employment or in an office, not being service in employment or in an office of a kind mentioned in paragraph (3), where the employment or office is specified in a list produced for the purposes of this paragraph (see Article 3A)."

3. After Article 3 insert—

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**“List of employments and offices for purposes of Article 3**

3A.—(1) The Department may specify an employment or office in a list produced for the purposes of Article 3(3A) if paragraph (2), (3) or (4) applies in relation to the employment or office.

(2) This paragraph applies to an employment or office if—

- (a) at any time on or after the commencement of this Article, the employment or office ceases to be of a kind mentioned in Article 3(3), and
- (b) immediately before that time persons serving in the employment or office are, or are eligible to be, members of a scheme under Article 3 by virtue of Article 3(3).

(3) This paragraph applies to an employment or office if—

- (a) at any time before the commencement of this Article, the employment or office ceased to be of a kind mentioned in Article 3(3), and
- (b) at that time persons serving in the employment or office ceased to be members of a scheme under Article 3 or to be eligible for membership of such a scheme.

(4) This paragraph applies to an employment or office if—

- (a) it is of a description prescribed by regulations, and
- (b) the Department determines that it is appropriate for it to be specified for the purposes of Article 3(3A).

(5) The power to specify an employment or office in reliance on paragraph (4) may be exercised so as to have retrospective effect.

(6) The Department—

- (a) may at any time amend a list produced under this Article, and
- (b) must publish the list (and any amendments to it).

(7) The published list must comply with such requirements, and contain such information, as may be prescribed by regulations.

(8) Regulations made under this Article are subject to negative resolution.”.

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# GAD revised cost figures on non implementation of schemes April 15

## Assembly Section

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Mr Shane McAteer  
Clerk  
Committee for Finance and Personnel  
Room 419  
Parliament Buildings  
Stormont

Our Ref –MISC115/11-15

21 June 2013

Dear Shane,

### **GAD Revised Cost Figures on Non Implementation of Revised Schemes from April 2015**

I refer to the follow up recommendation following deliberations of the Committee briefing by Departmental Officials on 24 April 2013 and the subsequent letter from the Chair of the Committee to the Minister on 1 May, requesting the Department take up the offer from the Government's Actuary Department (GAD) to calculate the estimated savings from the proposed reforms in relation to each of the relevant local schemes.

In the Minister's response letter of 17 May 2013 to the Chair he indicated that we need to be mindful that the rationale for commissioning GAD to undertake this piece of work was solely to demonstrate that there would be a cost for any delay beyond April 2015 in implementing the Executive decision taken on 8 March 2012.

The previous GAD advice on the potential cost to Northern Ireland was based on detailed analysis on the Health Service Pension Scheme and the Department conducted a similar analysis for the other unfunded Northern Ireland Public Service Pension Schemes resulting in an estimated total cost of £262million for one year's delay in implementing the pension reforms.

However, in response to your request, GAD confirmed that to undertake further similar exercises for the other Northern Ireland schemes would cost in the region of £20k -£30k and as both the Committee and the Collective Trades Unions Consultation Group have been pressing for this information the Department commissioned GAD to undertake this analysis and the revised GAD response received on 13 June is attached in the Annex.

### **Outcome of GAD Analysis**

The original overall figure quoted for a delay of one year in the implementation of pension reforms was in excess of £262m; however, the revised figure received from GAD based on the detail of each scheme is now estimated at £300m.

Departmental officials have advised that the differences in figures is mainly as a result of the department previously calculating the costs on the same financial assumptions as the Health Scheme; however the difference in the cost of the current final salary scheme and proposed CARE scheme calculated as a percentage of pay is now significantly greater for

schemes such as police and fire schemes. It also appears that the pensionable payroll figure previously used for Fire may have been too high. The revised figures are also rounded to the nearest £10m for all schemes.

It should be noted that the calculations carried out are approximate and are not based on detailed membership data. Once scheme valuations are completed this may change the result of the calculations.

Yours sincerely,

**Judith Finlay**

Departmental Assembly Liaison Officer

**Reference:**

Blathnaid Smyth  
Department of Finance and Personnel NI

by email to [blathnaid.smyth@dfpni.gov.uk](mailto:blathnaid.smyth@dfpni.gov.uk)

13 June 2013

Dear Blathnaid

**Potential cost of delaying the implementation of reformed pension schemes**

You have asked me to provide advice on the potential costs if the reform of the public service pension schemes in Northern Ireland as proposed by DFPNI is delayed beyond a target implementation date of April 2015.

The Northern Ireland schemes covered by this letter are:

- > Health and Social Care Superannuation Scheme
- > Principal Civil Service Pension Scheme
- > Teachers' Superannuation Scheme
- > Firefighters' Pension Scheme
- > Police Pension Scheme

We have not been asked to consider any costs in relation to the effect on changes to the Local Government Scheme.

This letter provides some figures indicating, in broad terms, the possible financial impact of delaying the implementation of the proposed reforms. This letter builds on, and should be read in conjunction with, my letter of 5 October 2012.

**Cost of delaying reforms**

The new CARE schemes which are proposed are expected to lead to a reduction in the cost of pension rights earned after 2015. To this extent there will be a reduction in future employer costs for each year after these are introduced.

If the proposed reforms were implemented with a delay, there would be a cost relative to implementation in 2015. This letter quantifies the potential cost in respect of each scheme if the implementation of the schemes is delayed beyond April 2015.

The table below shows the annual cost in the long-term of not implementing the proposed reforms for each of the scheme.

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| <b>Schema</b> | <b>Annual cost of delaying implementation (£ million)</b> |
|---------------|-----------------------------------------------------------|
| Health        | 110                                                       |
| Civil Service | 60                                                        |
| Teachers      | 60                                                        |
| Fire          | 10                                                        |
| Police        | 60                                                        |
| <b>Total</b>  | <b>300</b>                                                |

Figures are rounded to the nearest £10 million

It is important to understand the sensitivity of the figures in the short term to the policy stance taken towards transitional protection. Broadly speaking, the proposal in England and Wales is that members of existing schemes on 1 April 2012 who have ten years or less to normal retirement age will be able to remain in their current scheme (with a taper arrangement for those up to 13-14 years from normal retirement age).

If all aspects of reform are delayed by 1 year, including both the date of implementation of new scheme and transitional arrangements then, the cost relative to implementation in 2015 for the schemes would be, broadly, £300m for each year that the implementation of a new scheme was postponed. That is, if the new schemes were implemented from April 2016 (rather than April 2015) and members within 10 years of pension age in April 2013 were protected (rather than April 2012) plus a 3-4 year taper then the cost for the schemes would be, broadly, £300m. This figure is a capitalised cost but includes the cost of additional accrual in 2015/16 and for the following seven years for the additional members who would be protected compared with England and Wales. It is not clear whether HMT would seek to obtain this money entirely in 2015/16 or over the period 2015/16 to 2022/23.

Alternatively, if the new schemes were implemented from April 2016 (rather than April 2015) but protection was as for England and Wales (i.e. members within 10 years of pension age in April 2012 were protected plus a 3-4 year taper in addition) then the cost for the schemes would be less than £300m. Please let us know if you would like us to calculate any figures for this latter scenario.

Note that these calculations consider only the savings in respect of pension rights earned after 2015, but not the possible savings in respect of rights accrued before April 2015 if the reforms cause members to receive those rights later than they would otherwise have done. If these possible savings in respect of rights accrued before April 2015 were allowed for when employer contribution rates were set, then the savings to NI of implementing reforms (or the costs of not implementing them) would be greater.

**Scheme designs**

We have assumed that the proposed changes to schemes will follow those which will be implemented in Great Britain following the Public Service Pensions Act 2013 ("the Act"). The benefit designs we have taken into consideration are set out in the Annexes to this letter.

The Act will align normal retirement age with state pension age for all the pension schemes discussed in this letter other than the Firefighters' and Police schemes which would have a normal

## PROTECT - POLICY

retirement age of 60 for retirements from active service. This will reduce the costs of these schemes as pensions will be paid for a shorter period of time. It will reduce the value of pension rights accrued in the future (all other things being equal), but may also be expected to reduce the value of pension rights already earned if members with rights earned before and after 2015 choose to claim their pre-2015 rights later than they would have if the scheme remained unreformed.

The Act also requires schemes to be "career average revalued earnings" ("CARE") instead of "final salary" but leaves the details of the scheme to be specified in secondary legislation. The Nuvos section of PCSPS that new entrants have joined since 2007 is this type of scheme. The cost of a career average scheme depends on the accrual rate and the rate of revaluation of the pension rights while a member is in service. Each of the schemes for which the Westminster government has policy responsibility has proposed a different revaluation rate and a different accrual rate. We have assumed that the DFPNI proposals for the post-2015 schemes in Northern Ireland are to mirror the designs agreed for the equivalent scheme that the Westminster government has policy responsibility for.

### Transitional arrangements

The Act allows for transitional arrangements and the UK government's proposal is that members of existing schemes on 1 April 2012 who have ten years or less to normal retirement age will be able to remain in their current scheme. A taper covering those with up to fourteen years to normal retirement age has also been proposed. This means that although the new schemes start in 2015, reduced employer contribution rates will not be fully realised until around 2022 when the last fully protected members reach normal retirement age and tapered members reach the end of their taper.

### Calculation approach and assumptions

Future employer contributions will depend on the approach taken at future valuations, and we do not know what that approach will be (for example, under the Act valuations must be carried out in accordance with Treasury directions which have not yet been published). The costs in this letter are described in terms of the total cost of benefits being accrued by current employees expressed as a percentage of pay, and we can reasonably expect HMT directions to require costs in future valuations to be expressed in this format. These costs are borne by employees and employers combined in the form of the contributions that each pays.

The figures shown above for the Current scheme design are higher than the current combined employer and employee contributions. The main reason for this is that the figures in this letter have been calculated using of the new "SCAPE" discount rate set by HM Treasury in 2011. Details of the calculated methodology as well as approximations and assumptions made are set out in the annexes to this letter.

The calculations we have carried out are approximate and are not based on detailed membership data. Valuations are being carried out for the schemes for which HMT will issue directions specifying how to carry out the valuation; the demographic assumptions will also be reviewed and may change from those underlying our calculations and this may change the results of the calculation. If a more accurate calculation is required, DFPNI may wish to ask each scheme to commission more detailed calculations from their actuarial adviser. No decisions about the level of contributions payable to schemes should be made on the basis of the figures in this letter.

### Third party reliance

This letter has been prepared for the use of DFPNI and must not be reproduced distributed or communicated in whole or in part to any other person without GAD's prior written permission.

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Other than DFPNI, no person or third party is entitled to place any reliance on the contents of this letter, except to any extent explicitly stated herein, and GAD has no liability to any person or third party for any act or omission taken, either in whole or part, on the basis of this letter.

Please let me know if you have any comments or if you would like us to consider the costs of the proposed designs for other schemes.

Yours sincerely

**James Pepler**

Deputy Chief Actuary

Annex A – Summary

Annex B – HSCPS

Annex C – PCSPS

Annex D – Teachers

Annex E – Fire

Annex F – Police



## PROTECT - POLICY

### Annex A - Summary of method and assumptions

We have estimated the possible future service contribution rates for the existing scheme designs and for the proposed CARE design from April 2015. We have used financial assumptions consistent with the cost ceilings produced by the UK Government and demographic assumptions appropriate to the individual schemes.

We have assumed that the CARE schemes will follow the designs of their respective E&W counterpart.

We have adopted a simplified methodology to calculate these contribution rates. We have assumed that all active members are an average age, and that a proportion of members (calculated from scheme specific withdrawal rates) leave the scheme at a projected average withdrawal age with the remainder retiring at or around the scheme's Normal Pension Age.

We have prepared a table for each scheme setting out the respective assumptions we have used.

We have assumed that members retire with a 100% chance of an eligible dependant and that for the purpose of these calculations all Fire and Police members are male.

We have used the same financial assumptions for each scheme:

#### **Financial assumptions**

|                                 |     |
|---------------------------------|-----|
| ➤ Discount rate                 | 5%  |
| ➤ Earnings increases            | 4¼% |
| ➤ CPI                           | 2%  |
| ➤ Discount rate net of earnings | ¾%  |
| ➤ Discount rate net of CPI      | 3%  |

The figures are expressed in terms of current pensionable payrolls. The pensionable pay figures used in the calculations are those for 2012/13 taken from draft resource accounts (Civil Service, police and fire) or the figure for 31 March 2012 (Teachers) or for 2011/12 (Health) from published 2011/12 resource accounts.

The contribution rates emerging from the next valuations of each scheme may differ from the figures above for the following reasons:

- The future design may differ from the assumed design above.
- In particular, it may include transitional arrangements with some members in the existing schemes and others in the reformed schemes.
- The figures above represent only the costs of accruing benefits, contribution rates emerging from the future valuations may include an adjustment for any (notional) surplus or deficit.
- The figures above are based on a standard actuarial methodology known as the Projected Unit Method consistent with UK Government cost ceilings, future valuations may use a different methodology.
- The calculations are based on an assumed average age and an assumed average age of withdrawal for each scheme.
- In particular, the calculations ignore ill health retirement and death in service; future valuations will allow for these.

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The above list is not exhaustive.

The other annexes specify the scheme-specific data and assumptions used in our calculations.

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## PROTECT - POLICY

## Annex B - Health

The following table sets out the element of the scheme design which have been allowed for, and assumptions used.

| Scheme                                                    | NPA 60                            | NPA 65                  | Proposed<br>CARE Scheme |
|-----------------------------------------------------------|-----------------------------------|-------------------------|-------------------------|
| <b>Scheme design</b>                                      |                                   |                         |                         |
| Basic design                                              | Final Salary                      | Final Salary            | CARE                    |
| Normal Pension Age                                        | 60                                | 65                      | SPA                     |
| Accrual rate (for member's pension)                       | 80ths                             | 60ths                   | 54ths                   |
| Accrual rate (for spouse's pension)                       | 160ths                            | 160ths                  | 160ths                  |
| Automatic Lump Sum                                        | 3 x pension                       | None                    | None                    |
| Commutation factor                                        | 12:1                              | 12:1                    | 12:1                    |
| Revaluation of benefits in service                        | Final Salary                      | Final Salary            | CPI + 1.5%              |
| Revaluation of benefits in deferment                      | CPI                               | CPI                     | CPI                     |
| <b>Demographic assumptions</b>                            |                                   |                         |                         |
| Age of member                                             |                                   | 42                      |                         |
| Male to Female ratio (weighted by pay)                    |                                   | Males: 30%; Females 70% |                         |
| Proportion leaving before retirement                      |                                   | 11%                     |                         |
| Age on leaving before retirement                          |                                   | 48                      |                         |
| Promotional salary increases to leaving before retirement | 10%                               | 10%                     | N/A                     |
| Age at retirement                                         | 63                                | 65                      | 67                      |
| Promotional salary increases to retirement                | 20%                               | 20%                     | N/A                     |
| Proportion of pension commuted at retirement              | 10%                               | 27%                     | 27%                     |
|                                                           | (in excess of automatic lump sum) |                         |                         |

The proposed final agreement for the health scheme in England and Wales is published here:

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/151957/dh\\_133003.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/151957/dh_133003.pdf)

## PROTECT - POLICY

## Annex C - Civil Service

| Scheme                                                    | Classic                           | Premium      | Nuvos                   | Proposed CARE Scheme |
|-----------------------------------------------------------|-----------------------------------|--------------|-------------------------|----------------------|
| <b>Scheme design</b>                                      |                                   |              |                         |                      |
| Basic design                                              | Final Salary                      | Final Salary | CARE                    | CARE                 |
| Normal Pension Age                                        | 80                                | 60           | 65                      | SPA                  |
| Accrual rate (for member's pension)                       | 80ths                             | 60ths        | 43.5ths                 | 43.1ths              |
| Accrual rate (for spouse's pension)                       | 160ths                            | 160ths       | 116th                   | 115ths               |
| Automatic Lump Sum                                        | 3 x pension                       | None         | None                    | None                 |
| Commutation factor                                        | 12:1                              | 12:1         | 12:1                    | 12:1                 |
| Revaluation of benefits in service                        | Final Salary                      | Final Salary | CPI                     | CPI                  |
| Revaluation of benefits in deferment                      | CPI                               | CPI          | CPI                     | CPI                  |
| <b>Demographic assumptions</b>                            |                                   |              |                         |                      |
| Age of member                                             |                                   |              | 43                      |                      |
| Male to Female ratio (weighted by pay)                    |                                   |              | Males: 50%; Females 50% |                      |
| Proportion leaving before retirement                      |                                   |              | 5%                      |                      |
| Age on leaving before retirement                          |                                   |              | 51                      |                      |
| Promotional salary increases to leaving before retirement | 2%                                | 11%          | N/A                     | N/A                  |
| Age at retirement                                         | 62                                | 62           | 65                      | 67                   |
| Promotional salary increases to retirement                | 4%                                | 20%          | N/A                     | N/A                  |
| Proportion of pension commuted at retirement              | 10%                               | 27%          | 27%                     | 27%                  |
|                                                           | (in excess of automatic lump sum) |              |                         |                      |

The proposed final agreement for the civil service scheme in Great Britain is published here:

<http://www.civilservice.gov.uk/wp-content/uploads/2012/03/ProposedFinalAgreement090312.pdf>

## PROTECT - POLICY

## Annex D - Teachers

| Scheme                                                    | Old Scheme                               | New Scheme              | Proposed CARE Scheme |
|-----------------------------------------------------------|------------------------------------------|-------------------------|----------------------|
| <b>Scheme design</b>                                      |                                          |                         |                      |
| Basic design                                              | Final Salary                             | Final Salary            | CARE                 |
| Normal Pension Age                                        | 60                                       | 65                      | SPA                  |
| Accrual rate (for member's pension)                       | 80ths                                    | 60ths                   | 57ths                |
| Accrual rate (for spouse's pension)                       | 160ths                                   | 160ths                  | 152ths               |
| Automatic Lump Sum                                        | 3 x pension                              | None                    | None                 |
| Commutation factor                                        | 12:1                                     | 12:1                    | 12:1                 |
| Revaluation of benefits in service                        | Final Salary                             | Final Salary            | CPI + 1.6%           |
| Revaluation of benefits in deferment                      | CPI                                      | CPI                     | CPI                  |
| <b>Demographic assumptions</b>                            |                                          |                         |                      |
| Age of member                                             |                                          | 42                      |                      |
| Male to Female ratio (weighted by pay)                    |                                          | Males: 30%; Females 70% |                      |
| Proportion leaving before retirement                      |                                          | 37%                     |                      |
| Age on leaving before retirement                          |                                          | 50                      |                      |
| Promotional salary increases to leaving before retirement | 4%                                       | 7%                      | N/A                  |
| Age at retirement                                         | 61                                       | 64                      | 67                   |
| Promotional salary increases to retirement                | 11%                                      | 12%                     | N/A                  |
| Proportion of pension commuted at retirement              | 10%<br>(in excess of automatic lump sum) | 27%                     | 27%                  |

The proposed final agreement for the teachers' scheme in England and Wales is published here:

<http://media.education.gov.uk/assets/files/pdf/t/tps%20proposed%20final%20agreement.pdf>

## PROTECT - POLICY

## Annex E - Fire

| Scheme                                                    | FPS                 | NFPS                    | Proposed CARE Scheme |
|-----------------------------------------------------------|---------------------|-------------------------|----------------------|
| <b>Scheme design</b>                                      |                     |                         |                      |
| Basic design                                              | Final Salary        | Final Salary            | CARE                 |
| Normal Pension Age                                        | 55                  | 60                      | 60                   |
| Accrual rate (for member's pension)                       | 45ths               | 60ths                   | 58.7ths              |
| Accrual rate (for spouse's pension)                       | 90ths               | 160ths                  | 156ths               |
| Automatic Lump Sum                                        | None                | None                    | None                 |
| Commutation factor                                        | actuarially neutral | 12:1                    | 12:1                 |
| Revaluation of benefits in service                        | Final Salary        | Final Salary            | CPI + 2.25%          |
| Revaluation of benefits in deferment                      | CPI                 | CPI                     | CPI                  |
| <b>Demographic assumptions</b>                            |                     |                         |                      |
| Age of member                                             |                     | 42                      |                      |
| Male to Female ratio (weighted by pay)                    |                     | Males: 100%, Females 0% |                      |
| Proportion leaving before retirement                      |                     | 3%                      |                      |
| Age on leaving before retirement                          |                     | 46                      |                      |
| Promotional salary increases to leaving before retirement | 5%                  | 6%                      | N/A                  |
| Age at retirement from active service                     | 55                  | 60                      | 60                   |
| Age at retirement for leavers                             | 60                  | 65                      | 67                   |
| Promotional salary increases to retirement                | 21%                 | 27%                     | N/A                  |
| Proportion of pension commuted at retirement              | N/A                 | 27%                     | 27%                  |

The proposed final agreement for the firefighters' scheme in England is published here:

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/14943/120524\\_-\\_Final\\_Agreement\\_-\\_Fire\\_-\\_FINALv2.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/14943/120524_-_Final_Agreement_-_Fire_-_FINALv2.pdf)

## PROTECT - POLICY

## Annex F - Police

| Scheme                                                       | PPS                    | NPPS                    | Proposed<br>CARE Scheme |
|--------------------------------------------------------------|------------------------|-------------------------|-------------------------|
| <b>Scheme design</b>                                         |                        |                         |                         |
| Basic design                                                 | Final Salary           | Final Salary            | CARE                    |
| Normal Pension Age                                           | 55                     | 55                      | 60                      |
| Accrual rate (for member's pension)                          | 45ths                  | 70ths                   | 55.3ths                 |
| Accrual rate (for spouse's pension)                          | 90ths                  | 140ths                  | 111ths                  |
| Automatic Lump Sum                                           | None                   | 4 x pension             | None                    |
| Commutation factor                                           | Actuarially<br>neutral | 12:1                    | 12:1                    |
| Revaluation of benefits in service                           | Final Salary           | Final Salary            | CPI + 1.25%             |
| Revaluation of benefits in deferment                         | CPI                    | CPI                     | CPI                     |
| <b>Demographic assumptions</b>                               |                        |                         |                         |
| Age of member                                                |                        | 41                      |                         |
| Male to Female ratio (weighted by pay)                       |                        | Males: 100%; Females 0% |                         |
| Proportion leaving before retirement                         |                        | 5%                      |                         |
| Age on leaving before retirement                             |                        | 47                      |                         |
| Promotional salary increases to leaving<br>before retirement | 7%                     | 15%                     | N/A                     |
| Age at retirement from active service                        | 55                     | 56                      | 67                      |
| Age at retirement for leavers                                | 60                     | 65                      | 67                      |
| Promotional salary increases to<br>retirement                | 11%                    | 34%                     | N/A                     |
| Proportion of pension commuted at<br>retirement              | N/A                    | 0%                      | 27%                     |

The reform design framework for the police scheme in England and Wales is published here:

<https://www.gov.uk/government/publications/police-pension-reform-overview>

Delegated Powers Memorandum for the Public Service Pensions Bill

**Assembly Section**

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Mr Shane McAteer  
Clerk  
Committee for Finance and Personnel  
Room 419  
Parliament Buildings  
Stormont

21 June 2013

Dear Shane,

**Public Service Pensions Bill - Delegated Powers Memorandum**

As you are aware, the Minister of Finance and Personnel introduced the Public Service Pensions Bill in the Assembly on 17 June 2013.

I attach details of each of the delegated powers contained within the Bill. You may wish to draw these matters to the attention of the Committee.

Departmental officials would be happy to provide additional information or briefing if required.

Yours sincerely,

**Judith Finlay**

Departmental Assembly Liaison Officer



## Public Service Pensions Bill

### Delegated Powers Memorandum

Prepared by the Department of Finance and Personnel

#### Introduction

1. This Memorandum identifies those provisions in the Public Service Pensions Bill which confer power to make delegated legislation. In each case, it explains why the power has been taken, why the matter would be dealt with by delegated legislation, and the reason for choosing the Assembly control selected.
2. The Public Service Pensions Bill provides a framework of core provisions for pension reform which will extend across public service schemes made for the public service employments in the devolved administration.
3. The powers in the Bill will supercede powers in existing legislation to create schemes for the payment of pensions and other benefits for devolved public service employments and offices.
4. Legislation to introduce similar provisions in the rest of the United Kingdom has already been enacted. The Public Service Pensions Act 2013 sets out the new arrangements for the creation of schemes for the payment of pensions and other benefits for public service pension schemes in England, Wales and Scotland. It legislates for new pension schemes for the armed forces and non-devolved judicial posts on a United Kingdom wide basis. It provides powers to Ministers of the Westminster Parliament to create public service pension schemes according to a common framework of requirements. The Westminster Act provides powers to HM Treasury to set specific technical details of certain requirements. It also gives powers to the Pensions Regulator to operate a system of independent oversight of the operation of these schemes. It contains powers to the Secretary of State to make regulations requiring scheme managers to keep specified records.

#### Overview of the Public Service Pensions Bill

5. The Bill establishes a single enabling power to make schemes by 'scheme regulations' for the payment of pensions and other benefits to those in the defined public service employments specified at clause 1. Such regulations are made by the 'responsible authority' for each area of public service employment, as described clause 2 and schedule 2.
6. The Bill makes schemes subject to regulatory oversight by the Pensions Regulator for standards of governance and administration. It sets restrictions on the future use of existing pension scheme powers. It provides for the closure to future accrual and replacement of pension arrangements for existing schemes. It contains provision for the closure to future accrual of bespoke schemes made for public bodies as specified by Order by the Department of Finance and Personnel.
7. Under clause 3 scheme regulations will require the consent of the Department of Finance and Personnel so as to provide ongoing oversight of the cost of public service pension provision.
8. Each scheme (and any statutory scheme that is connected to a scheme) will have a 'scheme manager' under clause 4 who will be assisted by a statutory pension board (clause 5) in ensuring that it is administered in accordance with applicable legislation and regulatory and governance standards.
9. Where a scheme is a defined benefits scheme, it must be established as a 'career average revalued earnings scheme', or another type of defined benefits scheme prescribed by the Department of Finance and Personnel, but not a final salary scheme (clause 8). Where accrued pension earnings need to be revalued by reference to prices or earnings, the prices or earnings measures must be applied on a consistent basis across the public sector (clause 9). The normal pension age of scheme members must be the same as their state pension

- age or 65, whichever is greater (except for firefighters and members of the police service) (clause 10).
10. Defined benefits schemes must be subject to regular actuarial valuation under clause 11. These valuations will assess and, in certain conditions, rebalance or redistribute scheme costs so that the cost to employers of providing the scheme stays within defined margins (clause 12). Additional valuation requirements apply to defined benefits schemes that operate a pension fund, to ensure the solvency and long-term cost-efficiency of such schemes (clause 13).
  11. The Bill seeks to establish a consistent governance and administrative framework for public service pension schemes, to improve transparency and accountability. As well as the requirement for pension boards there is a power to require information to be published or supplied to the Department of Finance and Personnel for collation under clauses 14 and 15 and for the Department of Social Development to require certain records to be kept (clause 16). The Pensions Regulator, which is the regulator for occupational pension schemes, is given extended powers in relation to the governance and administration of public service occupational schemes under clause 17.
  12. Existing pension schemes are to be prevented from providing benefits in respect of service after 31 March 2015, or 31 March 2014 for the local government scheme, except where transitional protection will apply (clause 18). Scheme regulations may close existing injury and compensation schemes and make new provisions under clause 1 for such benefits at a date of their choosing under clause 19. For members of reformed pension schemes who also have service in a closed final salary scheme, their final salary for the purposes of the closed scheme will be their final salary when they leave their new scheme (not the date they leave the existing scheme) (clause 20 and schedule 7).
  13. Scheme regulations are subject to a standard requirement for consultation before being made or revised (clause 21). The policy intention is that the design of reformed public service schemes should last a generation, and under clause 22 changes to certain core elements of those schemes cannot be made during a twenty five year period unless requirements for enhanced consultation and reporting procedures are met. The enhanced procedure also applies to regulations that contain retrospective provisions which are capable of having significant adverse effects on members of the scheme.
  14. While clause 1 sets out the main groups of public servants to whom each scheme may apply, under clause 25 the Bill allows the permitted membership of each scheme to be extended to other persons in public service and to persons not in public service where the responsible authority considers that appropriate.
  15. The reformed Local Government Pension Scheme (Northern Ireland) will come into effect one year earlier than the other reformed schemes. While the changes may be made under their existing powers initially, they will later be treated as made under the Bill, to give full effect to the powers and restrictions it contains (clause 28).
  16. The permitted membership of the existing Principal Civil Service Pension Scheme (Northern Ireland) will be able to be extended so that the scope of those able to be members of the current scheme more closely matches the scope of those able to be members of the reformed scheme (clause 29 and schedule 9).
  17. Clauses 30 to 32 of the Bill (public body pension schemes) deal with pension schemes established by public authorities for non-departmental public bodies, and arm's-length bodies. Provision is made for their pensions to be provided in the future either under a scheme established by clause 1, or if that is not possible, through a new scheme with similar design features. The standard design features are to apply to new pension schemes for public bodies, including bodies set up after this Bill is enacted (clause 30). Certain features of schemes made under clause 1 apply to new public body pension schemes including the

regulatory regime and the arrangements for valuations and an employer cost cap. The Department of Finance and Personnel may specify by Order public bodies which currently make provision for pension and other benefits schemes from allowing future accrual in those schemes (clause 31).

18. The Bill's provisions are to be commenced by an Order made by the Department of Finance and Personnel except for those provisions which extend access to the existing Principal Civil Service Pension Scheme (Northern Ireland) which come into force on Royal Assent (clause 36).
19. The Committee is referred to the Explanatory and Financial Memorandum accompanying the Bill for further background.
20. The Bill has a total of 36 clauses and 9 schedules. There are powers allowing for the making of statutory rules by negative resolution and powers to make statutory rules by both affirmative and confirmatory resolution procedures.
21. The Bill contains provisions which allow regulations to contain such incidental, supplementary, transitory, transitional or saving provisions as the Department of Finance and Personnel considers necessary. This does not, on its own, provide the Department with any additional powers. Rather it allows such provisions to be included in the subordinate legislation made under the Bill.

#### **Provision for delegated powers**

22. Clause 1(1): Schemes for persons in public service

*Power conferred on: the Northern Ireland Departments specified in Schedule 2*

*Powers exercised by: regulations made by statutory rules*

*Assembly Procedure: where the regulations contain amendments to primary legislation, make retrospective provision having significant adverse or relate to holders of judicial office (unless minor or beneficial), affirmative; otherwise negative.*

23. Clause 1(1) allows regulations to establish schemes for the payment of pensions and other benefits, such as injury and compensation schemes. The "scheme regulations" are made by the Northern Ireland Department responsible for the scheme in question ("the responsible authority"). The persons for whom schemes may be made and the relevant responsible authority are set out in clause 1(2) and schedule 2 respectively.
24. The Bill sets out further requirements as to the contents and procedural requirements for scheme regulations that are made under clause 1, including in the following clauses:
25. clause 3 - scheme regulations. Subject to the other provisions in the Bill, schemes may make any provision which the responsible authority considers appropriate, including, in particular, the list of features set out in schedule 3. They may make consequential, supplementary, incidental or transitional provision. In doing so, scheme regulations may amend primary and secondary legislation and make retrospective provision. Scheme regulations require the consent of the Department of Finance and Personnel.
26. clause 4 – scheme manager. Scheme regulations must provide for a "scheme manager", or scheme managers, to be responsible for managing or administering the scheme or part of it;
27. clause 5 – pension board. Scheme regulations must provide for the establishment of a "pension board" to assist the scheme manager in ensuring that the scheme is administered in accordance with the scheme regulations and that it complies with legislative and regulatory requirements, including directions issued by the Pensions Regulator under an amended regulatory framework. Scheme regulations for the Local Government Pension Scheme

- (Northern Ireland) provide for the Northern Ireland Local Government Officers Superannuation Committee, which administers the scheme, to also be the pension board;
28. clause 7 – scheme advisory board. Scheme regulations must provide for the establishment of a board with responsibility for providing advice to the responsible authority for the scheme on the desirability of scheme changes.
  29. clause 8 – types of scheme. Scheme regulations may establish schemes including defined benefit and defined contributions schemes. But defined benefits schemes may not be final salary schemes and must be either “career average revalued earnings schemes” or schemes of a description prescribed in regulations made by the Department of Finance and Personnel;
  30. clause 9 – revaluation. Where earnings accrued as pension are to be revalued by reference to changes in prices or earnings in a given period (for example in a career average revalued earnings scheme), the percentage change in prices or earnings to be referred to must be as specified by the Department of Finance and Personnel for that period in an order;
  31. clause 10 – pension age. The normal pension age of members of schemes under the Bill must be their state pension age or 65, whichever is greater (except for firefighters, and members of the police forces for whom the normal pension age is to be 60). The deferred pension age must be their state pension age or 65, whichever is greater, for all schemes;
  32. clause 11 – valuations. Schemes under the Bill are required to have actuarial valuations. Clause 11(2) permits the Department of Finance and Personnel to make directions about how schemes are to be actuarially valued;
  33. clause 12 – employer cost cap. Scheme regulations must set a rate, expressed as a percentage of pensionable earnings of members of the scheme, called the “employer cost cap”. The regular scheme valuations will be used for the purpose of assessing whether the costs of the scheme have breached pre-determined margins and triggering remedial action if they have; scheme regulations may set a procedure for determining how the scheme is to address a breach of the margins by seeking agreement between the scheme manager, employers and members. They may also set a default adjustment that will be used if the procedure fails to produce an agreed response (clause 12(6));
  34. clause 13 – employer contributions in funded schemes. Funded schemes, such as the local government pension scheme must provide for pension fund valuations to value the fund and set the rate of employer contribution needed to secure the solvency and long-term cost-efficiency of the scheme (so far as relating to the pension fund);
  35. clause 18 – restriction of existing pension schemes. Scheme regulations may provide for exceptions to the restriction on providing benefits in respect of future service, by way of transition, including by amending existing schemes;
  36. clause 19 – closure of existing injury and compensation schemes. Scheme regulations may close existing injury and compensation schemes; again exceptions for transitional purposes may be provided;
  37. clause 21 – consultation. Before scheme regulations are made, the responsible authority must first consult with those who appear likely to be affected by them;
  38. clause 22 – procedure for protected elements . Before making a change to “protected elements” of a scheme, such as the career average revalued earnings design, consultation with a view to reaching agreement is required with those who appear likely to be affected. A report must also be laid before the Assembly explaining why the change is proposed having regard to the desirability of not changing protected elements within the 25 year period from 1 April 2015.
  39. clause 23 – procedure for retrospective provision. Proposed regulations which include provisions with retrospective effect which appear to the responsible authority to have

significant adverse effects in relation to the pension payable to or in respect of members of the scheme must have the consent of the persons (or representatives of the persons) who appear likely to be affected by the provisions. Proposed regulations with retrospective effect which appear to the responsible authority to have significant adverse effects in any other way in relation to members of the scheme require consultation with affected parties with a view to reaching agreement;

40. clause 24 – other procedure. Regulations which amend primary legislation or make retrospective provision which appears to the responsible authority to have a significant adverse effect on members of the scheme are subject to the affirmative procedure; otherwise, they are negative,
41. clause 25 – extension of schemes. Scheme regulations can include provision for persons who are not within clause 1(2), including persons who are not in public service.
42. **Clause 1(3) and Schedule 1, paragraph 2: Persons in public service: definitions:**  
*Power conferred on: the Department of Justice*  
*Assembly Procedure: negative*  
*Powers exercised by: order made by statutory rule*
43. Paragraph 2(1) of Schedule 1 allows the Department of Justice to specify by order “holders of judicial office” for the purposes of pension provision.
44. These order-making powers are needed to set out who the responsible authority is for the pension matters of ‘holders of judicial office’.
45. It is considered that the negative procedure is sufficient for these orders. The power conferred is similar to the existing arrangement in the service pension scheme where the Department of Finance and Personnel may specify employments eligible for that scheme by orders subject to the negative procedure.
46. **Clause 8(2)(b): Types of scheme**  
*Power conferred on: the Department of Finance and Personnel*  
*Powers exercised by: regulations made by statutory rules*  
*Assembly Procedure: negative*
47. Clause 8(2)(b) allows the Department of Finance and Personnel to make regulations to prescribe what type of defined benefits schemes other than career average revalued earnings schemes are to be permissible in scheme regulations. The power may not be used to prescribe defined benefits schemes of the final salary type.
48. The reformed public service schemes that are proposed to be made under clause 1 are all career average revalued earnings schemes. That design was recommended by the Independent Public Service Pensions Commission. It is expected that for the foreseeable future all defined benefits schemes will be of that type.
49. The power would allow the Department of Finance and Personnel to prescribe alternative designs. The provision allows for such designs should they ever be required, without the need for further primary legislation.
50. It is considered that the negative procedure is appropriate since expanding the permitted range of scheme designs by regulations has no direct effect on what pensions are actually provided. Any new design would be implemented through scheme regulations, which are ordinarily subject to the negative procedure, and require consultation with affected parties, under clause 21(1). A change of this kind would engage the higher protection of clause 22

and so require consultation with a view to reaching agreement and a report to be laid before the Assembly, because it would change the extent to which a scheme is a career average revalued earnings scheme – see the definition of “protected elements” in subsection (5) of that clause.

51. **Clause 9(2): Revaluation**

*Power conferred on: the Department of Finance and Personnel*

*Powers exercised by: order made by statutory rule*

*Assembly Procedure: affirmative – only if the order specifies a percentage decrease; the negative procedure will apply in any other case*

52. Clause 9(2) allows the Department of Finance and Personnel to specify by order what change in prices or earnings is to be referred to by schemes for a particular period when they revalue earnings that have accrued as pension. Its purpose is to provide for such revaluations to be conducted on a consistent basis across the public service with regard to the choice of index and the period.

53. An order must be made each year taking into account changes in the relevant factors over the relevant period. By its nature, the percentage change of these factors is subject to regular variation and is therefore suited to delegated legislation. Similar procedures apply to the regular uprating of benefits (under the Social Security Administration (Northern Ireland) Act 1992) and official pensions in payment (under the Pensions (Increase) Act (Northern Ireland) 1971).

54. The order concerns a financial matter based on a technical calculation derived from published statistics. The negative procedure is considered to provide an appropriate degree of Assembly control where, as is normally the case, the order specifies a percentage increase. The affirmative procedure would apply in the case where there is a negative revaluation. The rate of revaluation (whether by reference to earning or prices, and whether subject to an additional uplift) will be consistent with discussions with member representatives and the Department of Finance and Personnel.

55. **Clause 11(2): Valuations**

*Power conferred on: the Department of Finance and Personnel*

*Powers exercised by: directions*

*Assembly procedure: none*

56. Clause 11(2) permits the Department of Finance and Personnel to make directions about how defined benefits schemes are to be actuarially valued. Its purpose is to provide for such valuations to be conducted on a consistent basis across the Northern Ireland public service schemes.

57. Subsection (3) lists particular matters which may be specified by direction including how and when valuations are to be carried out, the time in relation to which schemes are to be valued, the data, methodology and assumptions to be used in a valuation, and whether and how connected schemes are to be valued together. While there is a need for consistency across the public service schemes with respect to such matters, the Department of Finance and Personnel also needs to be able to revise its directions as circumstances change.

58. Department of Finance and Personnel directions made under this clause, and variations and revocations of them, can only be made after the Department of Finance and Personnel has consulted the Government Actuary: subsection (4).

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59. Department of Finance and Personnel directions under this clause will concern technical matters of actuarial practice and will not directly affect the value of pensions or the interests of members. It is therefore considered to be unnecessary for them to be subject to Assembly control.
60. **Clause 12(3): Employer cost cap: directions**
- Power conferred on: the Department of Finance and Personnel*
- Powers exercised by: directions*
- Assembly Procedure: none*
61. Clause 12(3) enables the Department of Finance and Personnel to make directions about how the employer cost cap is to be set. The directions may specify in particular how the first valuation of a new scheme under clause 1 of the Bill is to be taken into account in setting the cap. Subsection (4) enables the Department of Finance and Personnel to make directions specifying the costs, or changes in costs, that are to be taken into account on subsequent valuations of a scheme when assessing changes in the cost of the scheme against the employer cost cap. Subsection (4) also enables the Department of Finance and Personnel to make directions specifying the extent to which the costs, or changes in costs of any connected scheme are to be taken into account in the operation of the employer cost cap.
62. The Department of Finance and Personnel will use the directions to set consistent standards for the employer cost cap for all defined benefit public service pension schemes. The effect of the directions on the design of the scheme will be subject to Assembly oversight when the scheme regulations are made. It is therefore considered unnecessary for the directions themselves to be subject to additional Assembly control.
63. **Clause 12(5): Employer cost cap: regulations**
- Power conferred on: the Department of Finance and Personnel*
- Powers exercised by: regulations made by statutory rule*
- Assembly procedure: negative*
64. Clause 12(5) requires the Department of Finance and Personnel to make regulations to secure that the cost to employers of schemes made under the Bill remains within defined margins that will be set either side of the “employer cost cap”, which is a rate expressed as a percentage of pensionable earnings. The Department of Finance and Personnel regulations must also specify a target cost for a scheme, if the cost of the scheme goes beyond those parameters. These regulations may include consequential or supplementary provision under subsection (8).
65. The main aspects of how the cap is to work are indicated in the primary provision. It is considered appropriate to set out the details in delegated legislation within the framework set by the clause.
66. The Department of Finance and Personnel will use the regulations to set out consistent standards for all public service schemes. The regulations follow the negative procedure like scheme regulations, which is considered appropriate because broad design is already established by primary legislation. The purpose of the regulations is to manage the financial risk in public service schemes.
67. **Clause 14(2)(b): Information about benefits**
- Power conferred on: the Department of Finance and Personnel*
- Powers exercised by: direction*
-

*Assembly Procedure: none*

68. Clause 14(2)(b) allows the Department of Finance and Personnel to direct scheme managers for schemes made under clause 1 which are defined benefits schemes to provide any information the Department of Finance and Personnel considers appropriate in a statement describing scheme benefits earned by a person in respect of his or her pensionable service.

69. The power is considered appropriate for delegated legislation so that the information can be varied easily in response to current benefit information needs. No Assembly procedure is considered necessary given the routine nature of the information in question.

70. **Clause 14(6): Information about benefits**

*Power conferred on: the Department of Finance and Personnel*

*Powers exercised by: direction*

*Assembly Procedure: none*

71. Clause 14(6) allows the Department of Finance and Personnel to direct scheme managers for schemes made under clause 1 which are defined benefits schemes as to the manner in which they are to provide a benefit information statement required under clause 14(1).

72. The power is intended to be used to secure the production of consistent and timely information about benefits across each of the public service pension schemes made under clause 1. No Assembly procedure is considered necessary given the routine nature of the information in question.

73. **Clause 15(1): Information**

*Power conferred on: the Department of Finance and Personnel*

*Powers exercised by: direction*

*Assembly Procedure: none*

74. Clause 15(1) allows the Department of Finance and Personnel to direct scheme managers or the responsible authority for schemes made under clause 1 to publish information about the scheme or provide such information to the Department of Finance and Personnel. Its purpose is to improve the transparency and accountability of public service schemes by ensuring that consistent information is made available about all such schemes.

75. The power is considered appropriate for delegated legislation so that the information requested can be varied easily in response to current information needs; other information requirements placed on schemes; and best practice in making appropriate information available. It is similar in nature to the accounting directions the Department of Finance and Personnel issues to public sector bodies (see for example section 9(2) of the Government Resources and Accounts Act (Northern Ireland) 2001).

76. The power is intended to be used to secure the production of consistent and timely information from schemes to allow accurate comparisons to be made across the public service schemes. No Assembly procedure is considered necessary given the routine nature of the information in question. It is noted that the power cannot be used to require information that could not otherwise be published to be published or provided (for example because of data protection concerns).

77. **Clause 16(1): Records**

*Power conferred on: Department for Social Development*

*Powers exercised by: regulations made by statutory rule*



*Assembly procedure: negative*

78. Clause 16 allows the Department for Social Development to make regulations setting out the records that scheme managers of public service pension schemes established under clause 1 and other statutory pension schemes that are connected with them are required to keep.
79. Secondary legislation is appropriate given the level of detail and the possibility that the precise record-keeping requirements may need to be changed from time to time in the future. As with similar powers in pensions legislation (see for example section 59 of the Pensions No.2 Act (Northern Ireland) 2008), the powers are subject to negative resolution procedure.

80. **Clause 17(2): Regulatory oversight***Power conferred on: Department for Social Development**Powers exercised by: order made by statutory rule**Assembly procedure: confirmatory*

81. Clause 17(2) allows the Department for Social Development to make an order making consequential and further provision in connection with the regulation of public service pension schemes that are created or regulated under this Bill. Such provision may amend primary and secondary legislation (including this Bill, once enacted).
82. The provision is necessary to ensure that there are no unintended consequences as a result of the new regulatory provisions. Although care has been taken to make sure that these provisions fit within existing legislation, the extent and complex nature of pensions legislation coupled with the uncertainty about precisely what shape the new schemes will take means that it is possible that further minor changes may be needed to ensure that the new regulatory regime can operate appropriately.
83. As the power provides for the amendment of primary legislation, it is appropriate that it should be made subject to confirmatory procedure to ensure Assembly scrutiny as a matter of course.

84. **Clause 25(5): Extension of schemes***Power conferred on: the responsible authority (specified NI Departments)  
(see clause 1(1) above)**Powers exercised by: determination**Assembly procedure: none*

85. Clause 25(5) allows the responsible authority for a scheme made under clause 1 to determine that the scheme is to apply to some or all of the persons not in public service who are potentially eligible under the scheme regulations.
86. Some public service pension schemes have long allowed persons who are not in public service to join a public service scheme (perhaps because their work is similar to that done by public servants) or to remain in such a scheme (for example if their functions are transferred into the private sector). Scheme regulations can provide for the general descriptions of person who should be eligible to join the scheme and what modifications, if any, apply. But it is appropriate to allow the precise eligibility of each scheme to be set by determination so that scheme regulations do not have to be amended each time there is a change to the workforce. Determinations can have retrospective effect to ensure there is no gap in any person's pension provision.
87. There is no Assembly procedure for such determinations because they operate within the scope set by scheme regulations which will have been subject to the negative procedure. Under clause 25(9) there is a requirement for the responsible authority to publish a list of the

persons to whom the scheme relates by virtue of determinations. This provides transparency and allows accountability for how the power has been used.

88. **Clause 29 and Schedule 9: Existing schemes for civil servants: extension of access: determinations**

*Power conferred on: the Department of Finance and Personnel*

*Powers exercised by: determination*

*Assembly Procedure: none*

89. Clause 29 and Schedule 9 amends the Superannuation (Northern Ireland) Order 1972 and inserts a new sub paragraph (3A) in Article 3 of that order as well as a new Article 3A. Its purpose is to allow access to the existing Principal Civil Service Pension Scheme (Northern Ireland) to be extended to persons who were formerly members of the scheme but ceased to be so eligible, either after (see new Article 3A (2)) or before (see new Article 3A(3)) clause 29 comes into force.

90. It also allows persons who do not fall into those categories to be eligible for membership of the scheme if they are in employment or an office of a kind described in regulations made under new Article 3A(4). The eligibility of employment or an office specified in reliance on sub-paragraph (4) can apply with retrospective effect (sub - paragraph (5)).

91. In each case, a person becomes eligible to join the scheme by virtue of new sub-paragraph (3A) of Article 3 if: i) they fall within the categories set out in new article 3A; and ii) the Department of Finance and Personnel specifies that their employment or office is to be eligible. The Department of Finance and Personnel is required to specify the employment or office in a list which is to be published.

92. The arrangements described above permit access to the scheme until it is reformed. Their purpose is to allow former members of the scheme to remain in or rejoin the scheme if their membership of the scheme came to end when their service was contracted out.

93. The model of generic eligibility being set in primary or secondary legislation and specific admission being set by the Departmental decision evidenced by a statutory list is based on the arrangements in clauses 1 and 25 for reformed schemes. The reformed civil service scheme can have a much broader membership than the current one. These powers to extend membership of the current scheme are considered desirable to prevent decisions on contracting-out, to improve the efficiency of public administration, being delayed until the reformed civil service scheme (with its wider eligibility) is introduced in 2015.

94. It is considered appropriate to provide for changes at employer-specific level, within an overarching legislative framework, in this way.

95. **Clause 29 and Schedule 9: Existing schemes for civil servants: extension of access: regulations**

*Power conferred on: the Department of Finance and Personnel*

*Powers exercised by: regulations made by statutory rule*

*Assembly Procedure: negative*

96. New Article 3A(4)(a) of the Superannuation Order (Northern Ireland) 1972, inserted by Schedule 9 paragraph 3, allows the Department of Finance and Personnel to prescribe an employment or an office by description in regulations as a prerequisite for specifying that employment or office as eligible for admission to the Principal Civil Service Pension Scheme (Northern Ireland) under new subsection (3A) of Article 3. It is intended that the power would

be used in exceptional cases to enable specific persons or categories of persons to be members or to retain or regain membership of the scheme.

97. New Article 3A(7) of the Superannuation Order (Northern Ireland) 1972 allows the Department of Finance and Personnel to prescribe by regulations the requirements for the list of specified employments and offices (see above), including the information that it must contain.
98. These regulations will control the operation of the new arrangements to extend access to the existing civil service scheme, until it is reformed. They follow the same procedure as the order-making power under Article 3(4) of the 1972 Order for adding bodies to Schedule 1 to that Order.
99. **Clause 31(1): Power to restrict other existing public body pension schemes**  
*Power conferred on: the Department of Finance and Personnel*  
*Powers exercised by: orders made by statutory rule*  
*Assembly procedure: negative*
100. Clause 31(1) allows the Department of Finance and Personnel to specify by order public bodies whose pension schemes would be restricted and so that no benefits are provided under the scheme to or in respect of a person in relation to their service in the schemes after a specific date.
101. The purpose is to account for bespoke schemes made for public bodies whose pension arrangements must be reformed.
102. The power may amend primary and secondary legislation in consequence of, or for, purposes supplementary to closing these public body schemes to future accrual and making new pension provision. This is needed to ensure that existing statutory provisions are consistent with the new arrangements. Such amendments are expected to be both minor and technical. Given that the policy intention for reform of public body pensions and new scheme design is governed by provisions in primary legislation set out in clause 30 and clause 31 it is considered that the negative procedure is appropriate, even when primary legislation is amended.
103. **Clause 31(7): Restriction of certain existing public body pension schemes: new schemes**  
*Power conferred on: a public authority with responsibility for a public body pension scheme*  
*Powers exercised by: legal document etc*  
*Assembly procedure: none*
104. Clause 31(7) allows public authorities who have restricted pension schemes in accordance with subsection (2) to establish a new scheme for the payment of such benefits provided that the persons for whom the scheme would be made are not eligible to join one of the public service pension schemes made under clause 1.
105. The schemes in question concern members and officeholders at non-departmental public bodies, arm's length bodies and similar bodies and offices (as specified by order by the Department of Finance and Personnel under subsection 1). The intention is that all public service pension provision will in future be made, so far as possible, on a similar basis in the interests of fairness and consistency between public service workers. Where possible these members and officeholders will be eligible to join a clause 1 scheme so the power in subsection (7) would only be used exceptionally.

106. **Clause 36: Commencement**

*Power conferred on: the Department of Finance and Personnel*

*Powers exercised by: order made by statutory rule*

*Assembly procedure: none*

107. This clause provides powers for the commencement of the Bill.

108. The following provisions come into force on Royal Assent: clause 29 and Schedule 9 (existing schemes for civil servants: extension of access); clause 33 (general interpretation); clause 34 (Regulations, orders and directions); clause 35 (Financial provision); this clause and clause 37 (short title).

109. The Department of Finance and Personnel may by order appoint a day or days on which the other provisions of the Bill are to come into force and may appoint different days for different purposes. There is also a power to make transitional, transitory or saving provision .

110. This power is necessary to ensure a smooth transition to the new arrangements provided for in this Bill. As with commencement orders generally, there is no Assembly procedure for these powers.

111. **Schedule 4, paragraph 2(5): Insertion of new sub paragraph(6A)(b): Article 2 General interpretation**

*Power conferred on: the Department for Social Development*

*Powers exercised by: order made by statutory rule*

*Assembly Procedure: negative*

112. The new sub-paragraph allows the Department for Social Development, after consulting with the Department of Finance and Personnel, to exclude schemes from the definition of public service pension scheme in the Pensions (Northern Ireland) Order 2005, thereby excluding them from the new regulatory provisions created for public service pension schemes.

113. It is anticipated that the new regulatory provisions will apply to all new schemes under the Bill and many of the existing schemes. However, in some cases, the structure of an existing scheme may mean that the new provisions will not be necessary or appropriate. Some public body schemes may already be subject to the regulatory regime for trust-based schemes and it may therefore be sensible to exclude them from the definition to avoid overlapping provision.

114. The power to exclude is exercisable by order and subject to negative resolution procedure. This is appropriate given the proposed limited use of the power.

115. **Schedule 4, paragraph 14: Insertion of Article 85A Codes of practice: public service pension schemes**

*Power conferred on: the Pensions Regulator*

*Powers exercised by: statutory code of practice*

*Assembly Procedure: Code of practice to be approved by Department for Social development and laid before the Assembly, subject to negative resolution*

116. New Article 85A of the Pensions (Northern Ireland) Order 2005 allows the Pensions Regulator to issue codes of practice for public service pension schemes in relation to the exercise of their functions under pensions legislation. The Pensions Regulator is required to issue codes of practice relating to the matters listed in clause 85A(2).

117. The provision mirrors Article 85 which applies to pension schemes more generally. The codes will not be directly enforceable (see subsection (4)) although they may be admissible in evidence. As with the existing codes, these codes will give practical guidance on legal requirements and standards of conduct to assist those concerned in the administration of the public service pension schemes. The codes will help augment the legislation and assist in ensuring a proportionate regulatory approach.
118. The current codes are subject to a procedure set out in Article 86 of the Pensions (Northern Ireland) Order 2005 whereby the Pensions Regulator is required to consult on a draft before sending it to the Department for Social Development for approval. If approved, the Department for Social Development lays the code before the Assembly. It is then subject to the negative resolution procedure. This procedure will be adopted for the new codes of practice under Article 85A as well.
119. **Schedule 4, paragraph 14: New Article 85A(2)(k) Codes of practice: public service pension schemes**
- Power conferred on: the Department for Social Development*
- Powers exercised by: statutory rule*
- Assembly Procedure: negative*
120. As with Article 85 of the Pensions (Northern Ireland) Order 2005, there is a power for the Department for Social Development to prescribe additional matters on which the Pensions Regulator must issue a code.
121. Although all matters on which codes need to be published at present have been identified, it is possible that new areas may be identified in the future and it is therefore sensible to build in this flexibility. Again, as with the existing power, the power to specify additional areas is subject to negative resolution.
122. **Schedule 4, paragraph 19: New Article 225A(3)(b) Requirement for Knowledge and Understanding: pension boards of public service pension schemes**
- Power conferred on: the Department for Social Development*
- Powers exercised by: regulations made by statutory rule*
- Assembly procedure: negative*
123. Paragraph 19 inserts a new Article 225A into the Pensions (Northern Ireland) Order 2005. The Article mirrors for pension board members an existing provision in Article 224 of the Pensions (Northern Ireland) Order 2005, which sets out requirements for trustees to have a certain level of knowledge and understanding.
124. New Article 225(3)(b) allows the Department for Social Development to prescribe in regulations the matters of which a pension board member must have knowledge and understanding in addition to law relating to pensions.
125. As with the existing power in Article 224, this power will be subject to negative resolution. There is no immediate plan to use the power (and the power in section 224(4) has not been used to date), but as the pension board structure has not yet been fully developed in practice and given there may be a degree of variation in the make-up of the boards across the different schemes, it is sensible to have the flexibility to specify new matters to ensure a common standard.

# Departmental response to submissions to the Committee's call for evidence - September 2013

## **Assembly Section**

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Our Ref: CFP263/11-15

23 September 2013

Dear Shane,

At its meeting on 11 September, the Committee for Finance and Personnel, following consideration of the written submissions received from stakeholders on its call for evidence, agreed to request an urgent response from the Department on each of the issues/proposals raised.

The submissions included response papers on the Public Service Pensions Bill from:

- National Association of Schoolmasters Union of Women Teachers - NASUWT
- Northern Ireland Public Service Alliance - NIPSA
- British Medical Association - BMA
- Fire Brigades Union - FBU including NPA review paper
- Northern Ireland Committee – Irish Congress of Trades Unions - NIC-ICTU
- Northern Ireland Local Government Association - NILGA
- Northern Ireland Human Rights Commission - NIHRC; and
- NIPSA paper on the revised GAD costs.

## **NIC ICTU**

NIC-ICTU has stated that its response is a composite of the submissions by individual trade unions. Civil Service Pensions in DFP is currently engaged in discussions with NIC-ICTU on the Collective Consultation Working Group. This group is the recognised forum for consultation on the Bill. NIC-ICTU is providing central TUS representation at the forum on behalf of the individual trades unions which represent public service employments affected by the Bill.

DFP's response to the issues raised by TUS focuses therefore on the content of the composite NIC-ICTU submission on the Bill clauses. Where additional clause comments are raised in individual submissions, these are addressed separately.

## **Scheme specific Trade Unions**

The comments made by trade unions in respect of specific schemes, would be more appropriately discussed in the course of individual scheme level consultations with their

respective trade unions. This is because the secondary legislation process will provide scope for each relevant Department and Trade Union Side to further refine scheme specific arrangements. Departmental officials for each scheme will clarify these points at the appropriate Committee evidence sessions with their respective Committees.

#### **NILGA**

NILGA is the representative body for the twenty six district councils in Northern Ireland and therefore has a direct interest in the Northern Ireland Local Government Pension Scheme (LGPS). They have made particular comment on the Bill clauses 4 to 7 relating to Governance which DFP has addressed in its response to the composite NIC-ICTU submission.

#### **NI Commission on Human Rights**

The Northern Ireland Human Rights Commission in their role of advising the Assembly whether the Bill is compatible with human rights has made observations in their submission on some of the Bill clauses which the Department has specifically addressed separately in the response to the Committee paper.

#### **NIPSA letter re GAD Costings**

The DFP response to the NIPSA paper on the Government Actuary Department, GAD, costings reiterates the point that Minister Wilson made in previous correspondence to the Chair of the DFP Committee; namely that we need to be mindful that the rationale for commissioning GAD to undertake this piece of work was solely to demonstrate that there would be a cost for any delay beyond April 2015 in implementing the Executive decision taken on 8 March 2012. References to the method of calculations therefore are irrelevant and the Union and Committee should not lose sight of the obvious issue that there will be a significant financial penalty should the deadline not be met.

#### **Nevin Economic Research Unit Paper**

In addition to comments about specific schemes, we are also at this point not responding to the “discussion note” from the Nevin Economic Research Unit on “Increasing the Retirement Age of Public Sector Workers: Effect on the Wider Labour Market”. This paper was supplied by NIC-ICTU in response to the Committee suggesting to them that they provide evidence on the macro economic impact of increasing pension age. We are seeking advice from colleagues in Strategic Policy Division, DFP and will provide this to you and the Committee in due course.

I have now attached a DFP response and would be grateful if this could be circulated to the Committee ahead of the oral evidence sessions with the stakeholders involved.

Yours sincerely,

**Judith Finlay**

Departmental Assembly Liaison Officer

## Departmental response to Submission of the Trade Union Side: Northern Ireland Committee – Irish Congress of Trade Unions (NIC-ICTU)

### Clause 1

TUS Comment – *“What is the position in respect of other schemes e.g Ulster Sheltered Employment, NI Water and the X Border Bodies?”*

#### **Departmental Response**

The policy intention is that the provisions of the Bill will apply for all public service employments. Where there are additional bespoke schemes which provide pension arrangements for public sector employments not covered by the main categories listed at clause 1 of the Bill there is provision that these schemes may be incorporated into one of the new scheme arrangements or if this is not possible they must be reformed individually.

#### **Ulster Supported Employment Pension Scheme**

Ulster Supported Employment is mainly self funding. The organisation receives a limited amount of funds through the Department of Employment and Learning. Departmental officials are liaising with DEL to establish the approach to reform that will be applied to its pension scheme.

#### **Northern Ireland Water Limited Pension Scheme**

Northern Ireland Water Limited is classified, for the purposes of public expenditure and policy, as a Non-Departmental Public Body of the Department of Regional Development. The Northern Ireland Water Pension Scheme will therefore be within the scope of reform.

Both Ulster Supported Employment and Northern Ireland Water Limited operate funded trustee based schemes. To name these bodies at clause 1 of the Bill could legally oblige them to close their funded schemes to future accrual. Under Part IV of the Pensions (NI) Order 1995 all the liabilities in these schemes would become an immediate employer debt. This would be impracticable for these schemes and their sponsor Departments to manage.

Clause 31 of the Bill contains flexibilities for bespoke schemes for public bodies which will be subject to the reforms to be specified by Order by the Department of Finance and Personnel, and to an extended timescale where this may be required.

The effect is that the bespoke schemes for public bodies will be reformed but the option remains to accomplish this to a longer timescale. This is in keeping with the approach taken in the Westminster Public Service Pensions Act 2013 for Public Bodies in Great Britain.

#### **North/South Implementation Bodies**

The pension scheme for the North/South Implementation Bodies is legislated for under the Co-operation (Implementation Bodies) (Northern Ireland) Order 1999, made under section 55 of the Northern Ireland Act 1998. It is outside the legislative scope of the Public Service Pensions Bill to state powers to amend the schemes made for these bodies. However the Minister of Finance and Personnel and the Minister for Public Expenditure and Reform in ROI are agreed in principle that the scheme should be reformed. Officials in both jurisdictions are engaged on work to achieve this.

### Clause 3(3)(b)

TUS Comment – *“The TUS would wish to see this clause amended to ensure that it cannot provide for any detrimental (Henry VIII) changes”.*



**Departmental Response**

Clause 3(3)(b) allows scheme regulations to include provisions that have retrospective effect (in relation to a period that precedes the regulations coming into force). Retrospective powers are common in public service pensions legislation. For example, it may be necessary to adjust schemes to accommodate changes in law or where it would not be desirable to delay the benefit of a particular change but where time is required to consider the consequences and appropriate method of making the change. The powers at Clause 3(3)(b) to make retrospective changes does not allow for an unchecked erosion of members' accrued rights nor to take powers away from the Assembly.

Clause 3(3)(b) is subject to Clause 23 which sets out procedural requirements that apply to the exercise of the power to make retrospective provision and strengthens the processes for consultation with TUS on retrospective schemes changes which can be detrimental for scheme members and should be read in that context. Clause 23 specifies that where a retrospective provision would have significant adverse effects in relation to the pension payable to or in respect of members of the scheme, the authority must first secure the consent of representatives of the scheme's members i.e. trade unions. Such regulations would also be subject to affirmative resolution procedure in the Assembly and the authority must also lay a report in the Assembly.

**Clause 3(5)**

*TUS Comment – "TUS is concerned that this provides DFP with absolute rights of veto. This is especially so for the LGPS/NILGOSC Scheme which historically as a funded scheme requires DOE approval following negotiations(sic) with the NILGOSC employers and trade unions".*

**Departmental Response**

It is already a requirement of the Superannuation (Northern Ireland) Order 1972 and related existing Northern Ireland public service legislation that new secondary legislation for most of the existing public service schemes requires consent of the Department of Finance and Personnel before it can be made.

This ensures an appropriate level of accountability in the DFP role to oversee Departmental spending. DFP has a clear function to safeguard public finances. Pensions are a long term type of expenditure and liabilities cannot be suddenly cut or cancelled. Therefore it is important that there is some control on the long term potential costs of each scheme change. Departments will retain responsibility to determine future scheme designs as long as proposals remain within the scope of the Public Service Pensions Bill.

This Bill formalises requirements for scheme governance and cost control processes that will apply for all the public service schemes. It is appropriate that the DFP consent requirement is extended to all schemes, including the local government scheme. The local government scheme and the other schemes under the Bill will retain their responsibility for scheme level consultations with employers and TUS.

**Clause 5(5)(c)/5(7)(b)**

*TUS Comment – "This needs amending to provide that the member representatives are appointed from the recognised trade unions for the scheme via consultation with NIC-ICTU. See the submission from NASUWT regarding the context of Clauses 5 & 7, and some suggested amendments".*

**Departmental Response**

Clause 5 requires that scheme level regulations provide for establishment of a Pensions Board which will assist the scheme manager in effective and efficient governance and

administration of the scheme. Subsection 5(5)(c) requires the Board to include employer representatives and member representatives in equal numbers. Subsection 5(7)(b) defines member representatives as persons appointed to the Board for the purpose of representing members of the scheme and any connected scheme.

The Department is content that the provisions here are suitably constructed to describe the overall requirement for schemes to appoint member representatives to the pension board. The secondary legislation process provides scope for departments with scheme responsibilities and their TUS to further refine scheme level arrangements as appropriate in the course of their overall consultations on new scheme regulations.

## Clause 7

*TUS Comment – “A question arises as to the potential for the Pension Board to also fulfil the role of the “Scheme Advisory Board”. There is no detail as to the construction of the Scheme Advisory Board, TUS would propose it should be equal numbers of employers and employee representatives and that the employee representatives be appointed in line with the proposal at 5(5)(c)/5(7)(b) above.”*

### **Departmental Response**

Again the provisions here describe the overall requirement that scheme regulations must provide for the establishment of a Scheme Advisory Board with responsibility for providing advice to the scheme manager on the desirability of changes to the scheme. Clause 7 contains provisions which will ensure a person to be appointed as a member of the Board does not have a conflict of interest, which might prejudice the person's exercise of functions as a member of the Advisory Board.

The secondary legislation process provides scope for departments and TUS to further refine scheme specific arrangements as appropriate in the course of their scheme level consultations.

## Clause 8(1)

*TUS Comment – “Delete sub-clauses (b) and (c), these must be provisions only for a defined benefit scheme”.*

### **Departmental Response**

Clause 8 provides a broad power to create pension and benefit schemes of different designs including defined benefit and defined contribution schemes. The power is subject to the restriction that a new defined benefit scheme created under the Bill may not be of a final salary design.

The Clause allows for defined contribution schemes to be created and operate in line with the other principles of the Bill. Defined contribution schemes already exist in the public service, such as the Civil Service Partnership scheme which provides staff with choices for pension saving as an alternative to the main defined benefit scheme. There is no intention to provide defined contribution schemes instead of the CARE defined benefit schemes. It would be inappropriate to limit the options available to current and future generations of public service workers by removing these flexibilities from the Bill.

## Clause 8(2) (b)

TUS Comment – *“Add after “a deferred benefits scheme” – “of a final salary basis” and delete all else”.*

### Departmental Response

The Bill already protects deferred benefits staff have accrued in public service schemes and links these to final salary at whatever point a scheme member may leave service in the future. (Clauses 20, 31 and Schedule 7 refer).

Within the broad power to create pension and benefit schemes of different designs which clause 8 provides for, subsection 8(2)(b) includes provision for a defined benefits scheme of such other description as regulations made by the Department of Finance and Personnel may specify. As outlined above the Department considers it would be inappropriate to limit options or pension choices available for future generations of public service workers. However the policy intention is that the new CARE schemes legislated for under this Bill are designed to last for at least 25 years. The Bill applies enhanced processes for TUS consultation and Assembly scrutiny which will be made to apply in the event of any proposal to change the CARE scheme design, its benefit accrual rates and the members' contribution rates, outside of the normal operation of the cost cap mechanism, within that protected period.

## Clause 8(3)

TUS Comment – *“Delete”.*

### Departmental Response

Clause 8(3) provides that a defined benefits scheme of ‘such other description as regulations made by the Department of Finance and Personnel may specify’ may not be a final salary scheme. This is in line with the overall policy intent to replace final salary pension schemes with models which provide a fairer benefit structure across all employees, and are affordable for the tax payer and sustainable in the long term. The CARE design was recommended by the Independent Public Service Pensions Commission as a replacement for final salary model. It is expected that for the foreseeable future all defined benefits schemes will be of the CARE type.

## Clause 8(5)

TUS Comment – *“If not deleted (see 8(2) (b) comment and to read “positive resolution””.*

### Departmental Response

It is considered that the negative procedure is appropriate here since expanding the permitted range of scheme designs by regulations has no direct effect on what pensions are actually provided. Any new design would be implemented through scheme regulations, which are ordinarily subject to the negative procedure, and require consultation with affected parties, under Clause 21(1).

Also, any proposal for a change of scheme design kind which diverges from the CARE model would engage the higher protection of required at Clause 22 and so require extended consultation with TUS and a report to be laid before the Assembly. (Protected elements – Clause 22).

The negative resolution procedure allows appropriate Assembly scrutiny of the provisions of scheme regulations and the chance to debate those regulations if the Assembly wishes to do so.

## Clause 9(2)

TUS Comment – *“In respect of NILGOSC a funded scheme this determination should be for DOE following consultation with the NILGOS Employers and Trade Unions”.*

### **Departmental Response**

Clause 9(2) allows the Department of Finance and Personnel to specify by Order what change in prices or earnings is to be referred to by schemes for a particular period when they revalue earnings that have accrued as pension. Its purpose is to provide for such revaluations to be conducted on a consistent basis across the public service with regard to the choice of index and the period.

DFP has a clear function to safeguard public finances. Therefore it is important that there is control of the long term potential costs of each scheme change.

## Clause 9(3)

TUS Comment – *“This should be amended to provide only for a positive change in prices of earnings”.*

### **Departmental Response**

This Clause provides for both inflation and deflation to be tracked. A mechanism which tracks only increases in prices and earnings but ignores deflation results in an asymmetrical sharing of risk. Where deflation occurs and this is not reflected through the revaluation of scheme benefits, the cost of the scheme would rise and this could trigger the cost cap mechanism instead.

## Clause 9(5)(a)

TUS Comment – *“deletion of second clause “if... and””*

### **Departmental Response**

This comment requests that revaluation Orders should be subject to affirmative resolution procedure in the Assembly.

The Clause provides that affirmative procedure would apply in the historically rare case where there is a negative revaluation.

For all revaluations which give effect to a percentage increase negative procedure will apply. The negative resolution procedure is considered to provide an appropriate degree of Assembly control for revaluation orders where, as is normally the case, the Order specifies a percentage increase.

Similar procedures apply to the regular uprating of benefits (under the Social Security Administration (Northern Ireland) Act 1992) and official pensions in payment (under the Pensions (Increase) Act (Northern Ireland) 1971).

## Clause 9(5)(b)

TUS Comment – **“delete”**

### **Departmental Response**

Response as per Clause 9(5)(a) above.

## Clause 9(6)

TUS Comment – *“This raises issues as to the revaluation provisions in the Heads of Agreement for specific schemes e.g. teachers scheme”.*

### Departmental Response

Clause 9(6) provides an overarching requirement that any gap in a person’s pensionable service of up to five years must be disregarded for the purposes so that the person’s accruals are revalued during the gap as if the person were an active member. This is to allow those persons who have taken a break from pensionable service of less than five years to be treated, for pension purposes, as if they had remained in pensionable service in the scheme.

The Bill allows scope for variance in elements of scheme design in order to accommodate different agreements between each individual scheme and its TUS. Alongside accrual rates, contribution rates (subject to cost cap mechanism), lumps sum payments and ancillary benefits one of these elements is the terms of revaluation for active members. For example, the agreed scheme design for the teachers scheme in Great Britain may be set at CPI + 1.6% where the percentage revaluation of active members’ benefits in the civil service scheme in Great Britain may be set at CPI only. These are issues which will be subject to future consultation between individual responsible Departments and their TUS for each scheme here.

## Clause 10(1)

TUS Comment – *“Delete”.*

### Departmental Response

Clause 10(1) provides that the normal pension age in schemes regulations made under the Bill, with the exception of those for police officers and fire-fighters, must be set at state pension age, or 65, if that is higher.

This provision was a central recommendation of the Independent Public Service Pension Commission to respond to trends in increased longevity, options for deferred retirement and increased working lifetimes, and to make public service pension provision sustainable for the long term. The overall reform policy to link scheme public service pension age was agreed by the Executive on 8 March 2012.

An equivalent provision is included in the Westminster Public Service Pensions Act 2013 under which new schemes for public servants, in England, Wales and Scotland will be created.

The NI administration would face a substantial reduction in its available funding from HM Treasury if this policy is not implemented or delayed.

## Clause 10(2)

TUS Comment – *“Add “(c) member of the prison service who is a prison officer””.*

*“Please note the FBU have submitted additional information regarding an amendment to this clause”.*

### Departmental Response

#### Prison Officers

The Independent Public Service PensionS Commission recommended that members of the armed forces, police officers and firefighters should have pension age set at 60. The Commission did not recommend concessions to the general policy for linking scheme pension age to state pension age for any other public service employment. In Northern Ireland

separate schemes currently exist for both police officers and firefighters. Prison Officers in Northern Ireland are members of the existing pension scheme for the Northern Ireland Civil Service and since 2007 new prison officers already have a pension age of 65.

In the course of consultations in Great Britain on the new Civil Service scheme design which will be made under the Westminster Public Service Pensions Act 2013 the Government made an additional offer to prison officer unions. The offer would have allowed operational prison staff to retain their current pension ages for future service without significantly higher taxpayer costs, nor a detrimental effect on other civil service staff. The offer was an additional measure on top of the transitional protections provided in the Westminster Act which already mean that those officers within 10 years of their current pension age will have their accrued and future pension rights protected until they leave service.

The Prison Officers Association which is the largest union in the United Kingdom representing Uniformed Prison Grades chose to reject this package.

### **Firefighters**

The Fire Brigades Union proposes an amendment to Clause 10(2) of the Bill so that the requirement for a normal pension age of 60 for firefighters is removed and replaced with a requirement that normal pension age for firefighters should be 'set out in scheme regulations but must be no more than 60'. The Union states that this is the way in which the normal pension age is set at the moment, and does not change the status quo.

The Public Service Pensions Bill introduces a new framework which will apply for all public service pensions and it has been designed to change the status quo based on the recommendations of the Independent Public Service Pensions Commission. The Westminster Public Service Pensions Act 2013 sets a pension age of 60 for firefighters for the schemes that will be created under that Act.

The current pension age for firefighters recruited from 6 April 2006 is set out in the New Firefighters' Pension Scheme Order (Northern Ireland) 2007 (NFPS). These regulations already specify a normal pension age of 60. Therefore the proposed amendment to the Bill would represent a regressive change to the current status quo.

The Department of Communities and Local Government Firefighters' Pension Committee undertook a review of normal pension age for firefighters and published a report in January 2013.

The report recommended that fire and rescue services should consider informing applicants at recruitment that those whose fitness is close to a pre-determined threshold are unlikely to maintain fitness to normal pension age unless they are able to increase their level of physical activity and/or reduce their body mass index and that fire and rescue services should conduct regular fitness assessments for all firefighters to ensure fitness for role is maintained.

The report did not recommend a change to the current pension age of 60. It recommended the next review of pension age should be undertaken once fitness standard(s) have been determined and sufficient data have been collected to measure the effect of implementing these standards. The report states that it is unlikely that the review will have sufficient data until at least 2016.

It is appropriate that full consideration should be given to issues of public safety connected with the provision of the fire and rescue services. This review considered available evidence on factors which may be shown to diminish an individual's ability to meet the occupational demands and fitness standards of the job. There is an obvious public safety concern where the fitness standards recommended by the Communities and Local Government Firefighters' Pension Committee are not met.

There will be firefighters currently in service who expected to retire at age 55. A proportion of this group will fall under the transitional protection category and will see no change in their expected pension age. There will be others who will have difficulty maintaining fitness to normal pension age of 60. The Firefighters' Pension Committee report made recommendations for terms for early payment of pension benefits to be incorporated in scheme regulations to accommodate cases where scheme members may leave service before the pension age as a consequence of failure to meet the required fitness standards. For example the report recommends that "Firefighters over the age of 55 who can no longer meet the fitness requirement could be allowed to leave early on an actuarially reduced pension. The pension should be calculated so there is no overall financial advantage or disadvantage to the firefighter (or to the pension scheme) from the member leaving before the NPA". (Normal Pension Age for Firefighters - A review for the Firefighters' Pension Committee - December 2012)

The Public Service Pensions Bill provides for scope at secondary legislation to incorporate variances in scheme design in the case of firefighters who may not meet the required fitness standards and leave service early.

These issues will be discussed in consultations with TUS at the secondary legislation stage for the firefighters scheme.

## Clauses 10(3), 10(4) & 10(5) (c)

TUS Comment – "Delete"

### Departmental Response

These subsections of Clause 10 are consequential of the main provision at Clause 10(1) which is dealt with above.

## Clause 11(2)

TUS Comment – "How does DFP intend to consult with the Pensions Boards, Scheme advisory Boards and in particular recognised trade Unions given the importance and potential implications of actuarial valuations".

*"The question also arises to the role of DFP in the LGPS/NILGOS Scheme, especially on view of the separate scheme actuary".*

### Departmental Response

Subsection 11(2) requires that a valuation for a scheme made under the Bill must be carried out in accordance with directions given by the Department of Finance and Personnel.

These directions will include procedural matters for how valuations should be carried out, including:

- how and when the valuation is to be carried out;
- the time periods over which a valuation will measure a scheme's assets and liabilities;
- the data, methodology and assumptions to be used in valuations;
- the matters that must be covered by the valuations (which may relate to the outputs that must be produced);
- how valuations of new and connected schemes will be combined, where they are to be valued together; and
- the time period for implementing changes to the employer contribution rate as a result of the outputs of the valuation.

It is unlikely that the scheme level Pension Boards and Scheme Advisory Boards will be functional prior to the valuation directions. There is no specific requirement to formally consult with the Pension Boards and Scheme Advisory Boards which will be created under the Bill on directions for scheme valuations. The Department is required to consult with the Government Actuary prior to making directions for scheme valuations.

The Department of Finance and Personnel is currently co-ordinating consultations with Departmental representatives with responsibility for the schemes which will establish the Pension Boards and Scheme Advisory Boards in scheme regulations made under the Bill. Discussions are ongoing at both the 'Public Service Pensions Bill Working Group' which was created to ensure the content of the Bill adequately reflects policy scheme requirements for each scheme, and the 'Northern Ireland Public Service Pensions Group' which is co-ordinated by the Department as an inter-departmental forum for consideration of the scheme level impacts of the Bill. Discussions on directions for scheme valuations are a feature of the work of both these groups.

The Department has been consulting with TUS on the Collective Consultation Working Group since February 2013. This group is the recognised forum for consultation on the Public Service Pensions Bill. NIC-ICTU is providing central TUS representation at the forum on behalf of the individual trade unions which represent public service employments affected by the Bill. The issue of directions for scheme valuations has been a feature of discussions at this forum and has been tabled as an agenda item for the next meeting of the Group on 1 October 2013.

Departmental representatives for the Local Government Pension Scheme are represented at each meeting of the Public Service Pensions Bill Working Group and the Northern Ireland Public Service Pensions Group where these issues are discussed. Representatives from the Local Government Pension Scheme Management Side and TUS side are represented at the meetings of the Public Service Pensions Bill Collective Consultation Group.

## Clause 11(4)

TUS Comment – *“To what view is the consultation with GAD given vis-à-vis consultation with others, especially when the norm is for DFP to ignore the views of consultees contrary to Lord Woolf’s Judgement in Rv North and East Devon Health Authority and the Assembly’s research Paper NIAR 246-12, 27/4/12”.*

### **Departmental Response**

The Department of Finance and Personnel is required to consult with the Government Actuary prior to making directions for scheme valuations. These consultations will focus on the procedural matters outlined.

The Case Law cited by TUS in the “Woolf” judgement concerns 4 principles “The Gunning Principles” which are taken to set a benchmark for effective consultation. The Department has conducted its currently ongoing consultations on the Public Service Pensions Bill in the spirit of these principles.

The 4 principles and a summary of how the Department’s approach has addressed each are as follows:

#### ***consultation must be undertaken at a time when proposals are still at a formative stage;***

DFP initiated contact with trade unions on 3 January 2013 and advised that it was its intention to engage fully with appropriate trades unions on policy consultation. The first meeting of the Group took place on 14 February 2013. These engagements are ongoing on a monthly basis.



***sufficient reasons must be put forward for the proposal to allow those consulted to give intelligent consideration and an intelligent response;***

DFP provided a formal consultation document to TUS, which contained detailed information on the purpose, background, core provisions, affected schemes and Departments, and the way forward. The Department has also provided additional information and scheme data in response to TUS follow up requests in writing and at each meeting of the Collective Consultation Group for the Bill.

***adequate time must be given for this purpose,***

The consultation period for policy content of the Bill continued for 12 weeks - in accordance with OFMDFM guidance. DFP has also followed through on its undertaking, at the Collective Consultation Working Group to continue to consult with TUS prior to and during the legislative passage of the Bill. It is therefore considered that the Department's approach provides for adequate time.

***the product of consultation must be conscientiously taken into account when the ultimate decision is taken.***

The Department has considered the TUS response to the public consultation, and the official response to the consultation addressed each of the issues raised to date by TUS. The Department continues to follow up and respond to issues raised by TUS in the course of the work of the Collective Consultation Group.

## Clause 11(5)

TUS Comment – “Delete”

### **Departmental Response**

This subsection provides that scheme regulations for a scheme which is not a defined benefits scheme may provide for actuarial valuations to be made of the scheme. It reflects the overall policy to formalise processes for valuations for schemes made under the Bill and the power at Clause 8 to create pension and benefit schemes of different designs including defined benefit and defined contribution schemes. As explained earlier in this response defined contribution schemes already exist in the public service as an option. There is no intention to provide defined contribution schemes instead of the CARE defined benefit schemes.

## Clause 12(3)

TUS Comment – “This should not cover the NILGOS scheme. The issue also arises of how costs are dealt with that arise as a consequence of the employer/DFP/GAD/HMT actions e.g.

- (i) Increase in ill-health retirements due to increasing the age of retirement;
- (ii) HMT earnings growth projections; and/or
- (iii) Changes to the Discount rate.”

### **Departmental Response**

The employer cost cap is an integral part of the new provisions to set consistent standards for processes for scheme governance and cost control across each public service schemes made under the Bill. This consistency of approach was a recommendation of the Independent Public Service Pensions Commission. DFP has a clear function to safeguard public finances. This provision ensures an appropriate level of accountability to the DFP role to oversee Departmental spending and improves transparency and accountability.

The cost cap mechanism is intended to control all of the cost risks associated with the new pension schemes. Only those changes which directly relate to members, such as changing expectations about life expectancy, salary growth or career paths, will be included in the cap mechanism.

## Clauses 12(4), 12(5), 12(7), 12(8)

TUS Comments – *“taking account of 12(3) how will DFP consult stakeholders (see 11(2))”*;

12(5) – “Amend taking account of 12(3) and 12(4)”;

12(7) – “There is no reference to protections for members”;

12(8) – “Amend taking account of 12(3), 12(4), 12(5), and 12(7)”;

12(9) – “Amend to affirmative resolution”.

### **Departmental Response**

The Department’s general approach to consultation with stakeholders on directions is outlined elsewhere in this response above. This approach will also apply for directions made by the Department under Clause 12.

In addition Subsection 12(5) requires the Department of Finance and Personnel to make regulations to determine how the cost cap will operate. The Department will undertake formal consultation with TUS on the content of these regulations and they will be subject to the scrutiny of the Assembly under the negative resolution procedure.

Subsection 12(7) provides that options available to address changes in scheme costs where margins for the scheme cost cap are breached may include an increase or decrease in member benefits of contributions.

The cost cap mechanism is intended to control all of the cost risks associated with the new pension schemes. Only those changes which directly relate to members, such as changing expectations about life expectancy, salary growth or career paths, will be included in the cap mechanism. The cap arrangements will be symmetrical, so that if costs fall below a certain threshold, the savings will be used to the benefit of scheme members. There will be a process of consultation to allow scheme managers, employers and TUS to reach agreement on how the scheme costs will be returned to the level of the cap.

The protections referred to by TUS relate to the protected elements described at clause 22 of the Bill. As pointed out previously the Bill applies enhanced processes for TUS consultation and Assembly scrutiny which will be made to apply in the event of any proposal to change the CARE scheme design, its benefit accrual rates and the members’ contribution rates within 25 years, but makes clear that this applies only outside of the normal operation of the cost cap mechanism provided for at Clause 12.

Subsection 12(9) provides that regulations made by the Department of Finance and Personnel under Clause 12 are subject to the negative resolution procedure in the Assembly. The negative resolution procedure provides the scope to debate those regulations if the Assembly wishes to do so.

## Clauses 13(3)

TUS Comment – “Clarity is needed with regards to the NILGOSC Scheme that the Actuary will only be the Scheme’s Actuary and not GAD or another DFP and/or DOE appointed Actuary”.

**Departmental Response**

Subsection 13(3) provides that scheme regulations must require the pension fund to be subject to actuarial valuation. Provisions in the scheme regulations will require the actuary for the scheme to set the employer contribution rate for the pension fund.

The valuation of the pension fund is separate from and in addition to the valuation of the whole scheme under Clause 11.

**Clauses 13(6) (c) (ii)**

TUS Comment – *“For NILGOSC this needs to be clarified so as to refer to the NILGOSC Committee”.*

**Departmental Response**

The Department is content that the provisions here are suitably constructed to describe the overall requirement for the scheme manager for the local government scheme to take the appropriate remedial steps which may be recommended in the report on the valuation which is a requirement of Subsection 13(4).

**Clause 14(2) (b)**

TUS Comment – *“DFP should be required to consult with all key stakeholders on the “directions””.*

**Departmental Response**

Clause 14(2)(b) allows the Department of Finance and Personnel to direct scheme managers for schemes made under Clause 1 which are defined benefits schemes to provide any information the Department of Finance and Personnel considers appropriate in a statement describing scheme benefits earned by a person in respect of his or her pensionable service.

The power is considered appropriate for directions so that the information can be varied easily in response to current benefit information needs. No

Assembly procedure is considered necessary given the routine nature of the information in question.

The Department will consult with all relevant stakeholders on the Public Service Pensions Working Group, the Northern Ireland Public Service Pensions Group and the Collective Consultation Group for the Bill, prior to the finalisation of directions.

**Clause 15(3)**

TUS Comment – *“As with 14(2)(b)”.*

**Departmental Response**

As with 14(2) (b) this is dealt with in the Departmental response above.

**Clause 18(4) (a)**

TUS Comment – *“There is an issue in respect of the term “closing date” as this could result in the scheme having to make good the deficit”.*

### **Departmental Response**

The “closing date” is the final date for accrual under the current pension arrangements. The subordinate legislation for the Local Government Pension Scheme will make provision to ensure that membership is continued under the new arrangements and protect membership accrued before 1 April 2014. The subordinate legislation will also make provision for the continuation of admission agreements for employers in the LGPS to avoid any cessation valuations being triggered.

The current Local Government Pension Scheme (Northern Ireland) is a statutory scheme made and amended by the Department of Environment under primary legislation in Article 9 of the Superannuation (Northern Ireland) Order 1972. It differs from the funded public body schemes dealt with at Clause 1 of the Departmental response which could be at risk of incurring an immediate employer debt if forced to close. The Department of Environment has statutory authority to amend the Local Government Scheme. The funded scheme for other bodies is set out in trust deeds and a number of trustees are responsible for the scheme. The trustees are the only people who can amend the trust deeds.

### **Clause 18(5) (a)**

TUS Comment – *“The date should be amended to 1 April 2015 or later if the new scheme is deferred to post April 2015”*

### **Departmental Response**

The Coalition Government’s projected savings for its programme of pension reform is based on an effective date of 1st April 2012 for these transitional protections. If we deviated from this date, this would result in increased costs for pensions and a corresponding financial penalty from HM Treasury.

### **Clause 21(1)**

TUS Comment – *“As pensions are deferred pay this should provide for negotiations with TUS. The consultation reference should be “with a view to reaching agreement” and be cognizant of the requirements of consultation”.*

### **Departmental Response**

The Bill makes a commitment to the protection of pension benefits already accrued in the existing public service schemes.

However the pension arrangements that will apply for the future cannot be classified as deferred pay or as a matter for collective bargaining. While “Negotiation” may be used in the context of collective bargaining and pay, “Consultation” is the term that is used in pension legislation and this is correctly reflected at Clause 21(1) which deals with the requirements for consultation with TUS before making scheme regulations.

The Department of Finance and Personnel’s approach to requirements of consultation has been outlined previously in this response.

The current procedures for making changes to current public service pension schemes vary from scheme to scheme. Under the Bill all future scheme changes will be made in regulations which will be subject to negative resolution procedure in the Assembly and which affords an appropriate level of Government scrutiny to ensure the proper consultation on scheme level changes has been completed.

## Clause 23(1)

TUS Comment – *“Delete, there should be no scope for retrospective changes (Henry VIII)”*.

### Departmental Response

Clause 23 sets out procedural requirements that apply to the exercise of the powers in the Bill to make retrospective provision. The Clause is designed to strengthen the processes for consultation with TUS on retrospective schemes changes which could be detrimental for scheme members. The power to make retrospective changes does not allow for unchecked erosion of members’ accrued rights nor to take powers away from the Assembly. Retrospective powers are common in public service pensions legislation. For example, it may be necessary to adjust schemes to accommodate changes in law or where it would not be desirable to delay the benefit of a particular change but where time is required to consider the consequences and appropriate method of making the change.

Clause 23 specifies that where a retrospective provision would have significant adverse effects in relation to the pension payable to or in respect of members of the scheme, the responsible authority must first secure the consent of representatives of the scheme’s members i.e. trade unions. Such regulation would also be subject to affirmative resolution procedure in the Assembly and the responsible authority must also lay a report in the Assembly.

## Clause 24(1) (c)

TUS Comment – *“All schemes would wish to have the privileged position given here to holders of Judicial office”*.

### Departmental Response

The provisions at Subsection 24(1)(c) specify that scheme regulations for a scheme relating to holders of judicial office will be subject to negative resolution in cases where the regulations are deemed to be minor or wholly beneficial to members. This is the same process applying in general for non detrimental scheme regulations for the other public service employments covered by the Bill. In other cases e.g. where there may be detriment to members the regulations would be subject to the affirmative procedure.

The Bill makes provision for the Department of Justice to make pension regulations for schemes for Judicial Offices should this be required in the future. However the current position is that the Department of Justice does not make scheme regulations for Judicial Offices and the majority of Judicial Offices have pension provision in regulations made by the Ministry of Justice in Great Britain. Clause 24(1)(c) replicates the provisions for parliamentary control for regulations for Judicial Offices that apply in the Westminster Act, to cover the eventuality that they may be required in the future. There is no immediate impact.

## Clause 25

TUS Comment – *“This may be the appropriate clause to provide for a revised “fair Deal” provision on the face of the Bill (to include ABS in the NILGOSC Scheme)”*.

### Departmental Response

Fair Deal has always been a non-statutory policy applying to pension provision for public sector staff in circumstances where their employment is compulsorily transferred to a non-public sector employer. It currently requires that the new employer provides a broadly comparable pension scheme for the transferred staff and bulk transfer arrangements for those staff who wish to transfer their public service pension benefits. The New Fair Deal

policy will be modified to provide that staff whose employment is transferred can retain membership of their public service pension scheme.

Clause 25 contains provisions to facilitate the new Fair Deal policy by enabling each Department with scheme responsibility to extend access to the public service pension schemes to appropriate groups or individuals who would not normally be eligible for the scheme, such as members who are compulsorily transferred out to the private sector.

It should be noted that while Fair Deal is a non-statutory policy, it is normal for elements of the resulting pension provision to be reflected in the outsourcing contractual arrangements. This approach has worked for Northern Ireland to date.

## Clause 26

TUS Comment – *“Delete, to enhance scheme sustainability there should be no scope to bolster private pensions”.*

### Departmental Response

This Clause allows scheme managers and employers to make payments towards the provision of pensions and other benefits that are not delivered through a scheme made under Clause 1 for persons who could have access to such schemes (specifically, both the class of persons described under clause 1 (2) and persons to whom a scheme has been extended under Clause 25). This will enable employers to contribute to private occupational pension schemes where: members of public service schemes wish to take out or retain private occupational pensions in addition to (or instead of) being members of public service schemes (such as the Northern Ireland Civil Service Partnership Scheme).

As is the case in the powers in Clause 8 of the Bill for provision of alternative scheme choices there is no intention to provide such arrangements instead of the CARE defined benefit schemes.

## Clause 28(2)

TUS Comment – *“Delete, there is no justification for a NILGOSC April 2014 implementation date”.*

### Departmental Response

Reform of the Local Government Scheme will be brought into force one year earlier than the other major public service schemes. This will enable the Department of Environment to bring forward savings from reform earlier as agreed as an alternative to increased employee scheme contributions which have been a feature of the other public service schemes since April 2012.

The secondary legislation for the Local Government Scheme will be drafted to comply with the core provisions of the proposed Assembly Bill on the basis of the Executive’s decision of 8 March 2012 to implement reforms in line with those for the equivalent schemes in Great Britain. The future scheme regulations will be required to comply with the final content of the Assembly Bill following its legislative passage.

## Clause 30(3)

TUS Comment – *“There will be a requirement to consult the TUS”.*

## Departmental Response

Subsection 30(3) requires that new public body pension schemes, and any variation to the rules of the schemes will require the consent of the Department of Finance and Personnel. Clause 30 identifies the provisions of the Bill which apply to new public body pension schemes. These provisions ensure that such schemes contain the same core design, cost control and governance features of the schemes established under Clause 1 and the requirement for consultation associated with these provisions.

## Northern Ireland Human Rights Commission Submission

The Commission expresses concerns over the legal certainty of Clause 23 of the Bill which permits retrospective application.

Accrued pension entitlements indeed do fall within the scope of ‘possessions’ for the purpose of Article 1 of Protocol 1 of the European Convention on Human Rights. It is not a contentious issue and the Department is aware that retrospective provisions in scheme regulations will not necessarily impede on the accrued pension entitlements and in the main the provisions could actually have a neutral or indeed positive effect on the member's entitlement.

*Subsection (3)(b)* allows scheme regulations to include provisions that have retrospective effect (in relation to a period that precedes the regulations coming into force), subject to Clause 23 (which sets out procedural requirements that apply to the exercise of the power to make retrospective provision). Such powers are common in public service pensions legislation. For example, it may be necessary to adjust schemes to accommodate changes in law or where it would not be desirable to delay the benefit of a particular change but where time is required to consider the consequences and appropriate method of making the change.

*Subsection (3)(c)* power is part of an enabling provision to make scheme regulations and has no effect on the rights of the individual. If scheme regulations containing retrospective provision were introduced dependant on the power, the regulations would set out the make up of the outcome on the rights of the scheme member. The Department considers therefore that it is the terms of such scheme regulations that would have to be assessed against the requirement for legal accessibility and foreseeability rather than the enabling power. In other words, the extent to which the requirement that the conditions of any restriction be provided by the regulations, which, until exercised, has no effect upon the rights of the member, but at the terms of any order made under it.

Clause 23 provides a procedure to be followed when retrospective provisions are included within scheme regulations proposed by the relevant authority.

Subsection (1) provides that where such retrospective provisions appear to the responsible authority to have significant adverse effects in relation to the pension payable to or in respect of members of the scheme, the authority must first obtain the consent of those who appear likely to be affected, either directly or through their representatives (subsection (3)).

Subsection (2) provides that where the retrospective provisions appear to the responsible authority to have significant adverse effects in any way not covered by subsection (1) in relation to the members of the scheme (for example, a serious adverse effect on injury benefits as opposed to pension benefits), the authority must first consult those who appear likely to be affected, either directly or through their representatives, with a view to reaching agreement.

Subsection (4) requires that where subsection (1) or (2) applies the responsible authority must lay a report before the Assembly (as defined in Clause 22(5)).

These robust processes ensure further scrutiny by the Assembly as retrospective provision is to be subject to the affirmative procedures.

Clause 9 deals with the procedure for revaluing the earnings of active members of pension schemes made under clause 1, where those earnings (or a proportion of those earnings) are used to accrue pension benefits. It relates to the revaluation of the accrued pension of active members of schemes and not the uprating or indexation of pensions that are deferred or in payment (for the Pensions (Increase) Act (Northern Ireland) 1971, and the consequential amendments in Schedule 8 to the Bill). Its purpose is to provide for such revaluations to be conducted on a consistent basis across the public service with regard to choice of index and the period. DFP has a clear function to safeguard public finances. Therefore it is important that there is control on the long term potential costs of each scheme change.

Clause 9(3) provides for both inflation and deflation to be tracked. A mechanism which tracks only increases in prices and earnings but ignores deflation results in an asymmetrical sharing of the risk.

For all revaluations which give effect to a percentage increase negative procedure will apply. The negative resolution procedure is considered to provide an appropriate degree of Assembly control for revaluation Orders where, as is normally the case, the Order specifies a percentage increase. Similar procedures apply to the regular uprating of benefits.

Clause 10 provides for the normal pension age and deferred pension age of members of most public service pension schemes to be the same as their state pension age, or 65, whichever is greater. This will not apply to firefighters or members of the police service, whose normal pension age will be 60.

The Department can justify the change in pension age for firefighters and police for the following reasons:

The current pension age for both firefighters and members of the police schemes recruited from 6 April 2006 is set out in the New Firefighters' Pension Scheme Order (Northern Ireland) 2007 (NFPS) and the New Police Pension Scheme 2006. These regulations already specify a normal pension age of 60. Firefighters and police recruited before 6 April have an earlier pension age. However, members of this group who are within 10 years of their pension age as at 1 April 2012 will have transitional protections and should see no change in their current arrangements until they leave service.

#### **GAD Costings: NIPSA Letter 13 June 2013**

Firstly, it is extremely important to reiterate the point that Minister Wilson indicated in his previous letter of 17 May 2013 to the Chair of the DFP Committee that we need to be mindful that the rationale for commissioning GAD to undertake this piece of work was solely to demonstrate that there would be a cost for any delay beyond April 2015 in implementing the Executive decision taken on 8 March 2012.

#### **Bullet Point 1**

The annual cost in the long term of not implementing the proposed reforms for each scheme assumes if all aspects of reform are delayed by 1 year, which includes both the date of implementation of the new scheme and transitional arrangements where the members within 10 years of pension age in April 2013 were protected plus a 3-4 taper then the cost relative to implementation in 2015 for the schemes would be, broadly £300 million. As indicated in the GAD paper this figure is a capitalised cost but includes the cost of additional accrual in 2015/16 and for the following seven years for the additional members who would be protected. Hence, the long term assumption deals with the estimated annual recurring cost attributable to delay or non implementation of the required reforms from April 2015.



**Bullet Point 2**

GAD has clearly stated that the calculations carried out are approximate and are not based on detailed membership data as there are outstanding issues in relation to specifics around scheme valuation directions and the review of demographic assumptions yet to be clarified. Therefore, given the approximations underlying the calculations, there is a risk of spurious accuracy in quoting a more detailed figure than one rounded to the nearest £10 million.

**Bullet Point 3**

HMT have never clarified whether they would seek to obtain the money over the period 2015/16 to 2022/23 or entirely in 2015/16. However, by way of example during the programme for increased member pension contributions in the case of a shortfall of £180,000 which was identified in one of the Northern Ireland schemes, due to a slower rate of the increase implementation, HM Treasury immediately requested the shortfall be rectified and the outstanding amount was quickly recovered. Therefore, based on this model it is likely that the latter would apply.

**Bullet Point 4**

The £300m quoted does include the assumption that transitional protection would also be shifted back by a year (i.e. the cut off date becomes 1 April 2013 rather than 2012 etc). You will note that GAD did offer to provide calculations based on the transitional protection being locked at 2012 as it is now. The Department did not request this calculation or indeed any further calculations. The Department agreed the request by the trade union representatives of the Collective Consultation Group and the subsequent request by the Chair of the DFP Committee to the then Minister of Finance and Personnel to calculate the estimated savings from the proposed reforms in relation to each of the relevant local schemes. The cost for GAD to undertake this further exercise for the other Northern Ireland schemes has cost the Department £28,000 to date. This is in addition to the £9,100 paid for the initial costing based on the Health scheme only. Departmental officials have made it very clear both at officials meetings with Trade Union Sides and at DFP Committee evidence sessions that the Department is not prepared to allocate any further resources to GAD costings particularly when the exercise was originally to point out a substantive cost to the NI block which has been clearly identified.

**Bullet Point 5**

Again, the point needs to be made that even if there is a possible range of £250m- £350m and even if the costings were indeed at the lower end of the range; the end result would still be that any divergence from the general deadline of 1 April 2015, will incur a significant financial impact on the block allocation. If the estimated cost range is £250m to £350m this still illustrates a massive and unacceptable cost associated with retaining pension arrangements for public servants in Northern Ireland which are more generous and more costly for the taxpayer than those provided for public servants in the United Kingdom generally.

**Bullet Point 6**

Some of the work completed by GAD was identifying the costs based on the financial assumptions set out in the HMT draft valuation directions in June 2013. The GAD figures used 4.25% for the earnings increase whereas the current draft of HMT Directions now specify that 4.75% is the earnings assumption to be used in the long term. In other words after 2018 which is well after the period for which pay policy has been set. Therefore, it makes sense to use the same assumption for all schemes. Conventionally, the long term earnings assumption is derived from the long term GDP forecast. Had an earnings figure of 4.75% been applied at the time that this estimate was prepared; the outcome would have been a figure significantly higher than £300 million.

The valuations already contain a long term GDP forecast, since the discount rate  $\text{CPI} + 3\%$  is equal to GDP growth from the OBR's November projections when the discount rate was set. The figures used by GAD have been calculated using this new "SCAPE" discount rate set by Treasury in 2011. So for consistency, it makes sense to use the same projections for the long term earning assumptions. GAD therefore assumed 4.25% earnings growth although it is recognised that this is higher than the current growth rate. Using the 4.25% rate (now estimated at 4.75%) ensured that the earnings assumption used to project the cost of future payments is consistent with the discount rate used to express those earnings in current terms. Using the current figure would create an asymmetry in the methodology and lead to perverse outcomes.

# DFP response to NERI discussion paper dated 30 September 2013

**Assembly Section**

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Our Ref: CFP263/11-15

30 September 2013

Dear Shane,

My letter of 23 September contained the Department's response to the Committee's urgent request concerning written submissions received by the Committee on the clauses of the Public Service Pension Bill.

It advised that Strategic Policy Division within the Department was considering the discussion paper by the Nevin Economic Research Unit on "Increasing the Retirement Age of Public Sector Workers: Effect on the Wider Labour Market". This paper had been supplied as part of the NIC-ICTU written submission in response to the Committee's earlier invitation to TUS to provide relevant evidence on macro-economic impacts of public service pension reform.

I have now attached the DFP response on this paper and would be grateful if this could be circulated to the Committee.

Yours sincerely,

**Judith Finlay**

Departmental Assembly Liaison Officer

## Nevin Economic Research Institute (NERI) paper– ‘Increasing the Retirement Age for Public Sector Workers: Effects on the Wider Labour Market’

### **Department of Finance and Personnel Response -**

The Department would highlight that the NERI paper considers only some labour market impacts of pension reform and does not consider all of the wider macro economic implications. There is, for example, no consideration in the paper as to what the impact would be of not reforming pensions and the potential cost that this carries, estimated in financial terms to be in excess of £300m per annum. These impacts cannot be set aside and would also have an impact on the labour market that is not considered in the paper.

It is also notable that this is a discussion paper the body of which presents arguments from both sides of the economic debate. The three possible unanticipated consequences that are highlighted in the papers introduction and conclusion are the downsides of the discussion. The paper does not say or suggest that these possible outcomes are any more or less likely than the other possible outcomes it considers. The three possible unanticipated consequences highlighted are:

- Labour market displacement in the short term if labour markets to not adjust immediately;
- That this adjustment may be delayed because the public sector has unique characteristics; and
- Increasing retirement ages may lead to increases in disability entitlements.

On the first point the paper recognises that increasing the retirement age of public sector workers is essentially an increase in labour supply. It recognises that such an increase does not necessarily translate into an increase in unemployment. It states that most economists are of the opinion that the labour market would adjust to meet this new supply and that in the long term the effects may be broadly positive. It references research that demonstrated that reducing the labour supply through early retirement had no impact on reducing youth unemployment. The downside that it highlights is the potential for labour market displacement because of frictional difficulties in the short run. The Department would accept that a short term impact on the labour market may occur but point out again that this needs to be set against the cost of not taking any action and the expectation that the market will adjust in time to deliver long term benefits.

On the second point, the report makes reference to the number of public sector jobs being fixed. This is not necessarily true if in the absence of pension reform pension costs become much higher. This would most likely result in a squeeze in public sector jobs. The report refers to how the private sector may not be able to absorb the over-supply of public sector workers such as teachers, nurses etc, if public sector posts become less readily available as a result of pension reform. The reform agenda aims to protect front line services.

Finally, regarding the third point, the report recognises that productivity can be dependent on many things including length of service, type of work and personal factors. It then highlights only the personal factor element focusing on a potential problem of higher levels of disability. This however is only one potential factor of many that could affect levels of productivity. For example, by increasing the retirement age, persons working longer will have the relevant experience and skills sets which could in fact result in them being more productive than a younger person who is less experienced.

In conclusion, the Department accepts that pension reform could result in short term labour market impacts but supports what this paper recognises is the view of most economists that the labour market will adjust over time and that there is the potential for long term benefits to emerge.

# Letter to DFP requesting response to Drafting Issues

## Committee for Finance and Personnel

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DFP Assembly Section  
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10 October 2013

Dear Judith,

### Public Service Pension Bill

Arising from the Committee's on-going deliberations, a number of drafting points and other issues have been identified in respect of provisions contained within the Public Service Pensions Bill.

In order to assist the Committee in its considerations, I would be grateful if the Department would provide a response to each of the queries detailed below:

### Insertion of an Overview Clause

- 1) Given that this is an enabling bill, what would be the Department's view on an amendment to insert an overview/purpose clause at the beginning of the Bill, setting out the guiding principles or policy objectives which the subsequent subordinate legislation should follow?

### Clause 1 – Schemes for persons in public service

- 2) What would be the Department's view on an amendment to subsection (1) as follows:  
  
'Regulations may establish schemes for the payment of pensions and other [insert 'similar'] benefits to or in respect of persons specified in subsection (2).'
- 3) What would be the Department's view on amendments to subsection (2) as follows:
  - Paragraph (c): replace 'local government workers' with "local government staff" to avoid including people working in the local government sector who are not employees (e.g. contractors). Similarly with 'health service workers' at (e);
  - Paragraph (d): replace 'teachers' with 'teachers in the public sector' to clarify that the provision does not cover teachers within private schools;
  - At the end of subsection (2) consider adding a provision to cover any other classes of persons specified by order in accordance with clause 25.

### Clause 3 – Scheme Regulations

- 4) What would be the Department's view on an amendment to subsection (3), paragraph (c) to leave out 'allow any person to exercise a discretion'?

If the Department considers this provision necessary, what clarification can be provided on how much discretion can be exercised under this provision? Can some examples be provided of how this discretion could be exercised?

- 5) Subsection (4) – Does the Department consider that an amendment is needed to clarify that the consequential amending provision does not apply to this Act?

#### **Clause 5 – Pension Board**

- 6) Subsection (3) – What clarification can the Department provide on how ‘securing compliance’ can be shown and on what safeguards exist to protect people from scheme mismanagement?
- 7) Subsection (4) – What stronger term can the Department offer to replace ‘desirability’?
- 8) Subsection (5), paragraphs (a) and (b) – What is the Department’s view on an amendment to create it an offence for a member of a board to not declare any conflict of interest? What are the sanctions for failure to comply with paragraph (b)?
- 9) Subsection (5), paragraph (a), subparagraph (ii) – What is the Department’s view on replacing ‘satisfied from time to time’ with a specified time period (e.g. every three months)?

#### **Clause 8 – Types of scheme**

- 10) Subsection (2) – What is the Department’s view on an amendment to insert ‘to any extent’ after ‘benefits scheme’?
- 11) Subsection (5) - What is the Department’s view on an amendment to require the regulations to be made by affirmative rather than negative resolution, given that this goes to the heart of the Bill?

#### **Clause 9 – Revaluation**

- 12) Subsection (1), paragraph (a) – What is the Department’s view on an amendment to clarify that the revaluation is required ‘at specified periods’?
- 13) Subsection (1), paragraph (b) – What is the Department’s view on an amendment to clarify that the revaluation should be by reference that reflects changes in prices or earnings...?
- 14) Subsection (3) – How would the Department respond to the view that this provides DFP with too much discretion?
- 15) Subsection (4), paragraph (b) – What is the Department’s view on an amendment to leave out ‘may make different provision for different purposes’?

Why does the Department consider that the power to ‘make different provision for different purposes’ is required?

- 16) Subsection (5) (b) – What clarification can the Department provide on the application of this provision in circumstances where the order is specifying a percentage increase which would result in a decrease in real terms?

#### **Clause 10 – Pension age**

- 17) Subsection (1), paragraphs (a) and (b) – How does the Department consider this provision might be clarified or is there a choice on offer?

#### **Clause 11 – Valuation**

- 18) Subsections (2), (3) and (4) – What justification does the Department have for these powers of direction and why is it required to consult only with the Government Actuary?

**Clause 12 – Employer cost cap**

- 19) Subsection (8), paragraph (a) – What is the Department's view on the need for including the term 'or supplementary'?

**Clause 14 – Information about benefits**

- 20) Subsection (1), line 24 – Does the Department intend to table an amendment to insert 'a' after 'which is'?
- 21) Subsection (6) – Would the Department be willing to table an amendment to require that the directions must aim to ensure that the benefit information statement is provided in such a manner so that the scheme members are reasonably able to understand it?

**Clause 23 – Procedure for retrospective provision**

- 22) Subsection (2), paragraph (b) – What is the Department's view on an amendment to delete 'significant' on line 20?

If the Department is not in agreement, what clarification can be provided on the test/meaning of 'significant' in this provision?

- 23) Given that this clause also deals with 'accrued rights', what is the Department's view on an amendment to replace 'with a view to reaching agreement' with 'and reach agreement' at lines 23-24 in subsection (2)?

**Clause 36 – Commencement**

- 24) What consideration has the Department given to the possibility that the commencement provision at line 29 in clause 36, subsection (3), paragraph (b) conflicts with the retrospective provision in clause 23?

Given the time constraints of Committee Stage and the need to avoid any undue delay, I would greatly appreciate your response by Friday 18 October 2013 in order to assist the Committee in its deliberations on the Bill.

Yours sincerely,

**Shane McAteer**

Committee Clerk

# Additional cost analysis of aligning pension age

## Assembly Section

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Our Ref: CFP272/11-15

21 October 2013

Dear Shane,

At its meeting on 2 October 2013, the Committee agreed to seek from the Department information on what research has been done or can be done to provide a cost-benefit analysis specifically on the implications of Northern Ireland not aligning the Normal Pension Age with the State Pension Age as proposed in the Bill.

The Department has commissioned two major actuarial analyses from the Government Actuary's Department concerning the impacts of not implementing the required pension reforms contained in the Bill in their entirety. Details of this work have been presented to the Committee. The purpose of this work has been to provide an estimate of the cost of any delay or failure in introducing the required reforms in order to illustrate the potential scale of the financial penalty which HM Treasury has confirmed it will apply if the policy is delayed or not implemented.

Additional work to provide a separate cost-benefit analysis on the specific implications not aligning the Normal Pension Age with the State Pension Age as proposed in the Bill has not been commissioned by the Department for the following reasons:

- I. The NI Executive had already considered and agreed (on 8 March 2012) the policy that new public service pension schemes will have pension age linked to state pension age and that the policy should be applied consistently in line with changes for the equivalent schemes in Great Britain. The Westminster Public Service Pensions Act 2013 has already set the general pension age for these equivalent schemes at state pension age;
- II. At its meeting of 26 June 2013 the Committee considered options for further work to assess the macro-economic implications of the Bill including an option to request the Department to undertake further cost analyses of the reforms, including the linking of scheme and state pension ages. The Committee declined to pursue this option but left the way open for Trade Union side to provide further evidence in this area. In response Trade Union Side provided a discussion paper by the Nevin Economic Research Institute: 'Increasing the Retirement Age for Public Sector Workers: Effects on the Wider Labour Market' as part of its written submission to the Committee on 30 August. On 30 September 2013 the Department provided a written response to the Committee which has addressed each of the issues raised in the paper provided by Trade Union Side;
- III. The agreed policy to link scheme and state pension age is based on the recommendation of the Public Service Pensions Commission to manage longevity risks for the taxpayer and



to facilitate trends for increasing life expectancy and options for deferral of retirement. It reflects progressive policy contained in existing Government legislation for State Pension Age for the population in general. It also reflects the general convention of interoperability whereby the benefit and contribution provisions for scheme pensions age between public service pension arrangements in Northern Ireland Health and Great Britain are almost identical. The Department's view is that any divergence from the general policy on scheme pension age from the equivalent schemes in Great Britain is unnecessary, would be contrary to the Executive's agreement on pension reform on 8 March 2012, and would have inevitable financial implications against the Northern Ireland funding made available from HM Treasury.

In summary the cost of the work commissioned from the Government Actuary's Department to date already represents a significant expense which is in excess of £37,000. Additional work in this area would cost in the region of £10,000 to £15,000 plus VAT and will take 3 to 4 weeks to complete.

This costing would provide an approximate estimate of the long term annual cost of not aligning Normal Pension Age with State Pension Age by building on the work GAD previously carried out for the Department on the potential cost of delaying the implementation of the reformed schemes. The estimated cost would be based on the same methodology and assumptions, and subject to the same limitations.

The exercise would consider only the civil service, teachers and health schemes in Northern Ireland as the Normal pension age for police and firefighter schemes will not be linked to State Pension Age under the Bill. Also, the exercise would address the 'costs' of not aligning Normal Pension Age with State Pension Age, but would not address the 'benefits' of such a policy.

A more detailed analysis, for instance looking at how costs may evolve from 2015 to the long term, would cost considerably more and take considerably longer to issue.

For the reasons outlined above the Department's view is that a further actuarial analysis aimed at specifically quantifying the implications of Northern Ireland not aligning the scheme pension age with the State Pension Age under the Bill would involve nugatory work and expense particularly when the purpose of the cost analysis exercise was originally to point out the substantive cost to the NI block which has been clearly identified. I would be grateful if you can bring this update to the attention of the Committee.

Yours sincerely,

**Judith Finlay**

Departmental Assembly Liaison Officer

# DFP response to committee letter dated 10 October 2013

## **Assembly Section**

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Our Ref – CFP273/11-15

30 October 2013

Dear Shane,

## **Public Service Pensions Bill**

On 10 October the Committee requested the Department's view on a number of drafting points and other issues arising from its deliberations on the Public Service Pensions Bill. The Department's response on each of the issues raised is given below in the order raised in the Committee's letter.

### **Insertion of an Overview Clause**

#### **Committee query**

*"Given that this is an enabling bill, what would be the Department's view on an amendment to insert an overview/purpose clause at the beginning of the Bill, setting out the guiding principles or policy objectives which the subsequent subordinate legislation should follow?"*

#### **Departmental response**

It is not drafting practice to include overview clauses in bills of the Northern Ireland Assembly. This is not to say that such clauses could not be included, where appropriate.

As this is a framework Bill, the guiding principles which those Departments making subsequent subordinate scheme legislation should adhere to are already set out in the clauses of the Bill itself and provide the necessary overview requirement within which Departments have scope to hone scheme design to suit the needs of their individual workforces. For these reasons it is difficult to see what form such a clause would take if it were to be helpful.

## **Clause 1 – Schemes for Persons in Public Service**

#### **Committee query**

*"What would be the Department's view on an amendment to subsection (1) as follows:*

*'Regulations may establish schemes for the payment of pensions and other [insert 'similar'] benefits to or in respect of persons specified in subsection (2).'* "

**Departmental response**

The enabling powers in this clause are specifically for the establishment of new public service pension schemes and schemes providing other benefits, such as injury and compensation benefits.

The extent to which these other benefits are similar is not defined or classified. Certainly the purpose of, and the circumstances in which Injury benefits and compensation benefits are payable differ from those for pensions. The Department's view is that the proposed amendment would not add to description of pension and other benefits which the bill provides for and is unnecessary.

**Committee query**

*"What would be the Department's view on amendments to subsection (2) as follows:*

- *Paragraph (c): replace 'local government workers' with "local government staff" to avoid including people working in the local government sector who are not employees (e.g. contractors). Similarly with 'health service workers' at (e);*
- *Paragraph (d): replace 'teachers' with 'teachers in the public sector' to clarify that the provision does not cover teachers within private schools;*
- *At the end of subsection (2) consider adding a provision to cover any other classes of persons specified by order in accordance with clause 25."*

**Departmental response**

The Bill provides the overall provision that regulations may establish schemes for the public service employments specified at clause 1 such as 'local government workers' or 'teachers'. These broad categories of employment are defined at schedule 1 of the Bill. It will be a function of the secondary scheme legislation to give further definition to employment status for members' where this might be required and to set out the criteria for eligibility for employees in the pension scheme.

**Clause 3 – Scheme Regulations****Committee query**

*"What would be the Department's view on an amendment to subsection (3), paragraph (c) to leave out 'allow any person to exercise a discretion'?"*

*If the Department considers this provision necessary, what clarification can be provided on how much discretion can be exercised under this provision? Can some examples be provided of how this discretion could be exercised?"*

**Departmental response**

Departmental discretion is a common feature of existing pension scheme rules. It provides flexibility in the delivery of ancillary benefits and entitlements in respect of service given by scheme members. For example the payment of death benefits for most schemes is classed as a 'discretionary' entitlement. This is a permissive provision which is beneficial to members in that such discretionary benefits are treated separately for purposes of taxation and are not generally subject to inheritance tax.

**Committee query**

*"Subsection (4) – Does the Department consider that an amendment is needed to clarify that the consequential amending provision does not apply to this Act?"*

### **Departmental response**

The Department is content that an amendment to specify the consequential amending provision referred to in clause 3(4) is not required. Scheme regulations made under the Bill cannot overturn the core requirements of the primary legislation.

## **Clause 5 – Pension Board**

### **Committee query**

*“Subsection (3) – What clarification can the Department provide on how ‘securing compliance’ can be shown and on what safeguards exist to protect people from scheme mismanagement?”*

### **Departmental response**

Scheme Pension Boards will have access to the annual reports which are required of scheme managers and chief accounting officers and also the additional scheme information and records that will be a requirement under clauses 15 and 16 of the Bill. The Bill introduces a framework for scheme valuation and cost cap processes which provide new common standards against which pension boards can measure and assess scheme compliance.

There are extended powers for the Office of the Pension Regulator and an accompanying new code of practice will apply for schemes made under the Bill. The Pensions Regulator has powers to impose fines where appropriate where scheme mismanagement occurs.

### **Committee query**

*“Subsection (4) – What stronger term can the Department offer to replace ‘desirability’?”*

### **Departmental response**

The term is general and describes only the aim of securing the effective and efficient governance and administration. It does not impact on the measures put in place in the Bill to achieve the aim of effective and efficient scheme governance. The provisions which will be the measure of effective and efficient scheme governance are specified throughout the clauses of the Bill. e.g. for Pensions Boards at clause 5, Scheme Advisory Boards at clause 7, and at clauses 14 to 17 which deal specifically with improving administration, governance and extended powers for the Pension Regulator.

### **Committee query**

*Subsection (5), paragraphs (a) and (b) – What is the Department’s view on an amendment to create it an offence for a member of a board to not declare any conflict of interest? What are the sanctions for failure to comply with paragraph (b)?*

### **Departmental response**

The Pension Regulator is preparing to consult on a code of practice which will provide principles, examples and benchmarks against which scheme managers and the members of pension boards can consider whether or not they are reasonably complying with and have understood their duties and obligations, including an obligation to declare a conflict of interest.

Under article 65 of the Pensions (Northern Ireland) Order 2005 scheme managers and the members of pension boards have a statutory duty to assess if a duty which is relevant to the administration of a scheme in question has been breached or is not complied with and to make a report to the Pensions Regulator. The Regulator has powers to impose penalties and fines where breaches have occurred and can in some cases prosecute offences in the criminal courts.

**Committee query**

*“Subsection (5), paragraph (a), subparagraph (ii) – What is the Department’s view on replacing ‘satisfied from time to time’ with a specified time period (e.g. every three months)?”*

**Departmental response**

The usage of this form of words is in line with provisions of the Interpretation Act (Northern Ireland) 1954 which at Section 17 states that “*where an enactment confers a power or imposes a duty, the power may be exercised and the duty shall be performed from time to time, as occasion requires.*” The periodic intervals which are to apply may be further defined in secondary legislation following consultation with stakeholders.

## Clause 8 – Types of Scheme

**Committee query**

*“Subsection (2) – What is the Department’s view on an amendment to insert ‘to any extent’ after ‘benefits scheme’?”*

**Departmental response**

The meaning of “defined benefits scheme” is clearly given at clause 33 of the Bill. A pension scheme is a “defined benefits scheme” if **or to the extent** that the benefits that may be provided under the scheme are not money purchase benefits (within the meaning of the Pension Schemes (Northern Ireland) Act 1993) or injury and compensation benefits. The Department’s view is that further clarification is unnecessary.

**Committee query**

*“Subsection (5) - What is the Department’s view on an amendment to require the regulations to be made by affirmative rather than negative resolution, given that this goes to the heart of the Bill?”*

**Departmental response**

The Department considers that the negative procedure is appropriate. It is the commonly employed mechanism for scheme regulations and allows appropriate Assembly scrutiny of the provisions of regulations and the chance to debate those regulations if the Assembly wishes to do so.

Also, any proposal for a change of scheme design kind which would diverge from the CARE model would engage the higher protections of Clause 22 and so require extended consultation with TUS and an additional report to be laid before the Assembly.

## Clause 9 – Revaluation

**Committee query**

*“Subsection (1), paragraph (a) – What is the Department’s view on an amendment to clarify that the revaluation is required ‘at specified periods’”*

**Departmental response**

Clause 9 (1) does not specify that a scheme must conduct a revaluation of earnings or accrued pension but that in cases where a scheme requires a revaluation then it should be made in line with the order made by the Department of Finance and Personnel.

Under the Bill schemes the responsible authority for each scheme has flexibility to give effect to different agreements on revaluation made in consultation with employee representatives

in scheme level consultations. Scheme regulations may address these specific arrangements and an amendment in the Bill is not required. Subsection 4 of clause 9 requires that the orders made by the Department of Finance and Personnel under this clause must be made annually.

**Committee query**

*“Subsection (1), paragraph (b) – What is the Department’s view on an amendment to clarify that the revaluation should be by reference that reflects changes in prices or earnings...?”*

**Departmental response**

The measures used are the specified Government measures such as the Consumer Prices Index and the Retail Prices Index which are used to inform the uprating of earnings and deferred benefits in uprating orders made annually by the Department of Finance and Personnel. These correspond with the overall changes made by HM Treasury.

**Committee query**

*“Subsection (3) – How would the Department respond to the view that this provides DFP with too much discretion?”*

**Departmental response**

The power does not give as much discretion as appears because the methodology has to be reasonable and grounded in observable and measurable changes in the economy. It is not feasible to simply pick a number, you would have to be able to prove the relationship with an underlying metric representing the general level of prices or earnings.

**Committee query**

*“Subsection (4), paragraph (b) – What is the Department’s view on an amendment to leave out ‘may make different provision for different purposes’?”*

*“Why does the Department consider that the power to ‘make different provision for different purposes’ is required?”*

**Departmental response**

It is not necessary to include paragraph (b) of subsection (4) because of the provisions of section 17 of the Interpretation Act (NI) 1954. This provides that “Where an enactment empowers any person or authority to do any act or thing, all such powers shall be deemed to be also given as are reasonably necessary to enable that person or authority to do that act or thing or are incidental to the doing thereof.” However, it was thought that, in this case, it would be helpful to the reader to include a specific reference.

In terms of the policy intent that the revaluation order may make different provisions for different purposes is to allow flexibility to give effect to different agreements on revaluation made with representatives of members of different schemes. For example, the agreed scheme design for firefighters could include revaluation of active members’ accrued benefits by reference to the general change in earnings, whereas the agreed scheme design for civil servants could include revaluation of accruals by reference to the general change in prices. The Department would be content with an amendment to omit the provision if this is the Committee’s preference.

**Committee query**

*“Subsection (5) (b) – What clarification can the Department provide on the application of this provision in circumstances where the order is specifying a percentage increase which would result in a decrease in real terms?”*

**Departmental response**

An order specifying a percentage increase will effect an increase in the revaluation of earnings. This is the normal outcome of annual revaluation. In the rare occasion where the annual change in the measure of prices or earnings is negative a corresponding order would result in a percentage devaluation of earnings or accrued benefits. Such an order would be subject to the wishes of the Assembly via of the affirmative resolution procedure.

**Clause 10 – Pension Age****Committee query**

“Subsection (1), paragraphs (a) and (b) – How does the Department consider this provision might be clarified or is there a choice on offer?”

**Departmental response**

There is no choice on offer. The clause is constructed to take account of the fact that females currently have a state pension age which is less than 65. From 1 April 2014 in the Local Government Pension Scheme and 1 April 2015 in the schemes for the other public service employments (except the schemes for police officers and firefighters) pension age must be the same as state pension age but in any case no lower than 65.

**Clause 11 – Valuations****Committee query**

“Subsections (2), (3) and (4) – What justification does the Department have for these powers of direction and why is it required to consult only with the Government Actuary?”

**Departmental response**

The clause reflects the overall policy to formalise processes for valuations for schemes made under the Bill. The Department of Finance and Personnel has overall oversight responsibilities for Departmental budgets and spending plans and is the appropriate body to implement and oversee directions to regulate processes for public service pension scheme valuations and costs.

The DFP function in making these directions is equivalent to that carried out by HM Treasury for the public service schemes in Great Britain made under the Public Service Pensions Act 2013. The directions deal the technical processes for how and when valuations are carried out, the type of data used and relevant demographic assumptions used to inform them. The technical expertise of the Government Actuary's Department is required to accomplish this and ensure the provision ensures this input. The Department of Finance and Personnel has given an undertaking at the Collective consultation working group for the Bill that it will consult with employee representatives on its draft directions.

**Clause 12 – Employer Cost Cap****Committee query**

“Subsection (8), paragraph (a) – What is the Department's view on the need for including the term ‘or supplementary’?”

**Departmental response**

Powers to make supplementary provisions are common in public service pension legislation. “supplementary” is typically included to allow for the eventuality that minor, unidentified

issues may crop up after the legislation has been passed. In the case of the public service pensions Bill it introduces a new regime and complex new provisions, including those for the cost cap. It is wise to take this power to ensure the new provisions can be made fully workable. The powers do not allow for an unchecked alteration of members' accrued rights nor to take powers away from the Assembly. Regulations for the employer cost cap remain subject to Assembly resolution procedure.

## Clause 14 – Information About Benefits

### **Committee query**

*"Subsection (1), line 24 – Does the Department intend to table an amendment to insert 'a' after 'which is'?"*

### **Departmental response**

Yes.

### **Committee query**

*"Subsection (6) – Would the Department be willing to table an amendment to require that the directions must aim to ensure that the benefit information statement is provided in such a manner so that the scheme members are reasonably able to understand it?"*

### **Departmental response**

The directions will specify requirements as to the information to be included, how that information is to be provided and also how that information is presented. The purpose of the directions will be to ensure members of all pension schemes are provided with clear and comprehensive information to enable them to understand their pension benefits. The Department view is that it is not necessary to further define the purpose of the directions for benefit statements on the face of the Bill.

## Clause 23 – Procedure for Retrospective Provision

### **Committee query**

*"Subsection (2), paragraph (b) – What is the Department's view on an amendment to delete 'significant' on line 20?"*

*If the Department is not in agreement, what clarification can be provided on the test/meaning of 'significant' in this provision?"*

### **Departmental response**

The significance of an effect will be weighed by the Pension Boards and Scheme Advisory Boards which will be constituted of both employee and employer representatives. One interpretation might be that a significant effect is one that that can be appreciated or felt. Therefore an effect could be small but still significant.

### **Committee query**

*"Given that this clause also deals with 'accrued rights', what is the department's view on an amendment to replace 'with a view to reaching agreement' with ' and reach agreement' at lines 23-24 in subsection (2)?"*



**Departmental response**

Clause 20 and schedule 7 of the Bill gives effect to the protection of accrued pension rights through the retention of the final salary link which will be made to apply for service in the old' schemes at any point when a scheme member leaves service in the future. Retrospective powers are commonly used in public service pensions legislation to adjust schemes in line with what are often routine or permissive changes. For example, it may be necessary to adjust schemes to accommodate changes in law where it would not be desirable to delay the benefit of a particular change but where time is required to consider the consequences and appropriate method of making the change.

Clause 23 requires responsible authorities to consult with the aim of reaching agreement on pension matters. Where agreement may not be achievable the clause provides for an effective trade union veto over the change where it would have a significantly adverse effect. Trade unions will also have representation on the Pension Boards and Scheme Advisory Boards which will have to be involved in determining the 'significance' of any adverse change. In the Department's view the protections for accrued rights and the safeguards against adverse scheme changes in the Bill are sufficiently robust. A trade union veto on every retrospective change could compromise the capability for responsible authorities to maintain scheme rules in compliance with overarching legal and policy changes.

**Clause 36 – Commencement****Committee query**

*"What consideration has the Department given to the possibility that the commencement provision at line 29 in clause 36, subsection (3), paragraph (b) conflicts with the retrospective provision in clause 23?"*

**Departmental response**

Having considered the matter the Department is satisfied that no conflict exists between clause 23 and clause 36. Regulations may be made so as to have retrospective effect. However, they cannot be retrospective further back than the date when the power to make the regulations was commenced. The fact that commencement orders may allow for different dates or indeed contain transitional or transitory or saving provisions provides for this.

I would be grateful if you could bring this response to the attention of the Committee.

Yours sincerely,

**Judith Finlay**

Departmental Assembly Liaison Officer

## Response to Committee letter dated 17 Oct

### **Assembly Section**

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Mr Shane McAteer  
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Our Ref CFP275/11-15

1 November 2013

Dear Shane,

### **Public Service Pensions Bill**

#### **Response to Letter from the Committee Dated 17th October 2013**

The DFP Committee scheduled an Evidence Session from DFP Officials on drafting issues and consideration of scheme amendments on the clauses in the Public Service Pensions Bill for 23 October 2013. The Committee had requested that officials are in a position to provide full responses at the Evidence Session on 23 October 2013 on the issues raised to assist the Committee further its deliberations.

On 17 October the Committee requested that the Department would provide a response to several queries and in light of the time constraints and given that DFP Officials would be attending the Committee meeting on 23 October they were content that the issues would be addressed during the oral evidence from the officials rather than in writing.

The majority of the issues raised only required detail and explanation on the technical and factual content of the clauses. However, some issues sought the Departmental approach to several proposed amendments. Therefore, as a result of time constraints and the DFP officials being unable to complete the detail on all issues and provide full responses, the Department consider it appropriate to now complete their response in writing.

The Department's response on each of the issues raised is set out at Annex 1, in the order raised in the Committee's letter of 17 October 2013. It should be noted that in instances where issues have been raised in earlier correspondence, this has been indicated and cross referenced.

Yours sincerely,

**Judith Finlay**

Departmental Assembly Liaison Officer

# Annex 1

## Response to Committee on Issues and Proposed Amendments Raised

### Clause 3 – Scheme Regulations

#### Committee Comment

***“Departmental officials agreed to follow up on issues arising from the discussion around this clause.”***

#### Departmental Response

Scheme regulations require the consent of the Department of Finance and Personnel. This is a standing convention. It is a normal constitutional principle and convention that DFP is tasked with ensuring propriety and regularity on behalf of the Assembly and the mechanism for doing this (in this case) is via the DFP approval role provided in the Pension Bill.

Clause 3 contains additional provisions about how the power to make scheme regulations under the Bill can be used. DFP consent is based on its responsibility for public expenditure on behalf of the NI Assembly and DFP’s good practice on protecting that responsibility by inserting consents in some legislation. An example of legislation which requires explicit DFP approval is expenditure falling on the Northern Ireland Consolidated Fund. The fact that pensions are paid out of Annually Managed Expenditure, AME and is cash being drawn down from the Consolidated Fund is probably the most important factor leading to greater scrutiny from DFP than might be the case for some policies.

### Clause 4 – Scheme Manager

#### Committee Comment

***Departmental officials agreed to follow up on the following queries:***

***“In what circumstances would it be necessary for the scheme manager to be different from the responsible authority (i.e. the 5 Departments listed at Schedule 2)?”***

***“What is the position as regards the existing main schemes?”***

#### Departmental Response

The Responsible Authority for schemes has the power to make the scheme regulations for the relevant scheme. (The Department). Each public service pension scheme must also have a Scheme Manager who is a person responsible for managing or administering the scheme. (Accounting Officer). The Responsible

Authority may also be the Scheme Manager however this can be difficult to manage where there are several parts to a scheme. In these scenarios the scheme may require different persons acting as scheme managers for each part of the scheme.

The existence of an administering authority (scheme manager) which is separate to the responsible authority (DOE) for the local government scheme is probably a reflection of the fact that from the late 1800s superannuation for local government officers was administered and paid for by the relevant councils.

The Local Government (Superannuation) Act 1950 established NILGOSC to administer what was then the Local Government Superannuation Scheme and the fund. Any remaining locally managed schemes, e.g. Belfast Corporation were wound up under powers in the Local Government Act (Northern Ireland) 1972.

Local Government, for example, have several Councils which can require individual scheme managers. The other unfunded schemes would, in the main, have dual role responsibilities with Responsible Authority and Scheme Manager.

## Clause 5 – Pension Board

### **Committee Proposal**

***“Arising from the concerns raised in the NILGA evidence, Departmental officials to confirm whether an amendment will be tabled to replace ‘must’ with ‘may’ at clause 5, subsection (2)”.***

### **Departmental Response - accept**

This is a non contentious proposal and provides flexibility for NILGOSC to act as the Pension Board if this is required. This approach was agreed with Local Government officials at the Public Service Pensions Bill Working Group. The DFP Minister will table an amendment to have replace ‘must’ with ‘may’ at clause 5, subsection (2). Previous discussions with both DFP Officials and NILGOSC have confirmed that they are content with this proposed amendment.

## Clause 7 – Scheme Advisory Board

### **Committee Comment**

***“Why will the scheme advisory boards provide advice to the responsible authorities only on request, under subsection (1)?”***

### **Departmental Response**

It is expected that the Pensions Board will consult the Scheme Advisory Board on desirability of scheme changes when action for scheme change is under consideration as a consequence of movement in scheme costs and adjustments to the cost cap or other overarching changes in law where a change is required to maintain scheme compliance.

The provision provides a statutory basis that the information will be provided when requested and at the appropriate time. Advisory boards would have discretion to offer a view on desirability of scheme changes as a matter of course at any time. The provisions in the bill for scheme advisory boards permit them to establish their own ways of working.

The provision ensures information is provided when requested. It does not rule out provision of a view at other times.

### **Committee Comment**

***“Would there be circumstances in which it would be preferable for a board to be able to offer its advice without being specifically requested to do so?”***

### **Departmental Response**

Advisory Boards are likely to offer advice when scheme changes are required as a result of overarching policy changes, overarching changes in law or European directives, or as a result of identified pressures on the cost cap mechanism on the approaches which could address these changes or cost pressures, such as a readjustment of contributions or other adjustments to the scheme.

**Committee Comment**

***“With reference to subsection (2), can a board offer advice to a scheme manager and pension board in circumstances where no more than one of each exist?”***

**Departmental Response**

Yes. But this is unlikely to be the case in the current NI arrangements. This provision provides for eventuality that there might be more than one manager as is the case in the local government schemes in GB. In the course of consultation on the Collective Consultation Working Group on the scheme provisions scheme representatives including those for the NI Local Government Scheme were content to retain this provision.

## Clause 8 – Types of Schemes

**Committee Comment**

***“What is the requirement for the provision in subsection (2), paragraph (b) regarding defined benefits schemes other than CARE schemes?”***

**Departmental Response**

It is expected that for the foreseeable future all defined benefits schemes will be of the CARE type. The Bill makes provision to protect the CARE scheme design so that it should last for at least 25 years. The Bill applies enhanced processes for TUS consultation and Assembly scrutiny which will be made to apply in the event of any proposal to change elements of the CARE scheme design, its benefit accrual rates and the members’ contribution rates, outside of the normal operation of the cost cap mechanism, within that protected period.

Lord Hutton considered variations of the CARE scheme design including cash balance versions where the accruals are based on career average earnings and then converted to an annuity on either guaranteed or open market terms. Lord Hutton recommended, and the current Government agreed, the CARE calculation design provided for in the Bill. The provisions at clause 8 allow a sufficient level of scope for a future generation to develop or modify the design for example if evidence for a progressively better model becomes available within the legislative lifetime of the Bill but within the context of the enhanced protections for protected elements (25 year guarantee) under clause 22.

The clause makes general provision for various scheme designs including those such as the defined contribution schemes which already exist in the public service, such as the Civil Service Partnership scheme. The aim is to provide staff with choices for pension saving as an alternative to the main defined benefit scheme.

There is no intention to provide defined contribution schemes instead of the CARE defined benefit schemes. It would be inappropriate to limit the options available to current and future generations of public service workers by removing these flexibilities from the Bill.

## Clause 9 – Revaluation

**Committee Proposal**

***“Is DFP required to consult on the orders that it makes under clause 9 and, if not, why not?”***

***With regard to the provision in clause 9, subsection (5) which would see only those orders that specify percentage decreases being subject to affirmative resolution, how would DFP respond to the view that, if percentage increases are a cost on the public purse, then the Assembly should have greater control over those also?”***

### **Departmental Response - reject**

DFP are required to consult on the orders that it makes under Clause 9. Generally, this would be through the 'negative resolution procedure which is a form of Assembly control over a statutory rule. A statutory rule going through this procedure will automatically become law unless the Assembly objects. Conversely, 'affirmative resolution procedure' refers to a procedure where a statutory rule must be affirmed or approved by the Assembly to become law.

If affirmative resolution procedures were applicable to all statutory rules the Assembly would likely be inundated with debates on many minor rule amendments which in the main would be non detrimental and therefore the Assembly process could be brought to a stand still.

The negative resolution procedure is considered to provide an appropriate degree of Assembly control for revaluation orders where, as is normally the case, the Order specifies a percentage increase. Similar procedures apply to the regular uprating of benefits (under the Social Security Administration (Northern Ireland) Act 1992) and official pensions in payment (under the Pensions (Increase) Act (Northern Ireland) 1971).

The Department currently makes orders to revalue pensions in payment in line with the general increases applied to state benefits and additional pensions and factors with reference to prices when DSD makes a revaluation order under the Social Security Administration Act 1992. A similar order would be made in line with the annual Social Security Revaluation of Earnings Orders made under that Act. The important point is these are established methods for annual adjustment in line with HM Treasury and DWP secondary legislation for revaluation in line with earnings or prices. The safeguard however is the requirement in this Clause which provides that affirmative procedure would apply in the historically rare case where there is negative revaluation.

## **Clause 10 – Pension Age**

### **Committee Proposal**

***“Given that some stakeholders have called for greater flexibility to enable future decisions on NPA to be made on a scheme-by-scheme basis, what would be the DFP view on an amendment to clause 10, subsection 1 to provide that the NPA must be the same as the person’s state pension age or ‘as otherwise prescribed in scheme regulations’?”***

### **Departmental Response - reject**

This clause is one of the core provisions of the PSP Bill and was a central recommendation of the Independent Public Service Pensions Commission to respond to trends in increased longevity, options for deferred retirement and increased working lifetimes, and to make public service pension provision sustainable for the long term. The overall reform policy to link State Pension Age with Normal (i.e. Scheme) Pension Age was agreed by the Executive on 8 March 2012. The Executive also agreed to implement these reforms consistently with the GB equivalent schemes. This is also a core provision now enacted in the Public Service Pensions Act 2013 in Great Britain. The NI Administration faces a substantial reduction in its available funding from HM Treasury if the policy to link State Pension Age with Normal Pension Age is not implemented or delayed. This clause does indeed specify the pension age however, it is important to point out that the secondary legislation process provides scope for departments and their TUS to further refine scheme level arrangements in the course of their overall consultations on new scheme regulations. This process is the correct route for scheme specific arrangements to mitigate the impact of reductions applied if individuals chose to retire early. Scheme officials can provide further evidence at the scheduled Evidence Session in relation to recent developments in equivalent GB schemes including the Firefighter’s scheme to provide effective options for early departures before the pension age required in the Bill. The response to the Committee to their letter of 24th also deals with this issue.

## Clause 12 – Employer Cost Cap

### Committee Proposal

***“Departmental officials agreed to follow up with consideration of amending the Bill to include a duty on DFP to consult before making directions”.***

### Departmental Response - accept

DFP have provided an undertaking at the Collective Consultation Working Group to consult for 12 weeks as this is a new procedure for DFP. The DFP Minister will table an amendment to include a further provision under Clause 12 to the effect that DFP Directions may only be made, after the Department of Finance and Personnel have consulted the relevant stakeholders.

### Committee Proposal

***“Is DFP required to consult on the regulations that it makes under clause 12, subsections (5) and (8) and, if not, why not?”***

### Departmental Response - accept

DFP have provided an undertaking at the Collective Consultation Working Group to consult for 12 weeks on the Employer Cost Cap regulations as this is a new procedure for DFP. The DFP Minister will table an amendment to include a further provision under Clause 12 to the effect that DFP Regulations may only be made, after the Department of Finance and Personnel have consulted the relevant stakeholders.

### Committee Proposal

***“Why does the provision at clause 12, subsection (7) not expressly state that the action provided for will not affect any provision already built up in the scheme, as is suggested on page 14 of the Explanatory & Financial Memorandum?”***

### Departmental Response - reject

Clause 3 (3) (b) deals with retrospection. Clause 12 does not provide for any power for retrospection; therefore there is no need for such an amendment.

## Clause 13 – Employer Contributions in Funded Schemes

### Committee Proposal

***“In relation to clause 13, subsections (4) to (7), Departmental officials agreed to follow up with consideration of amending the Bill to enhance the independence of the person appointed to review the actuarial valuation and employer contribution rates (especially given the role of the appointed person and the fact that the responsible authority and the scheme manager could be one and the same).”***

***“With reference to subsection (6), paragraph (c) of clause 13, Departmental officials agreed to follow up with consideration of amending the Bill to take account of circumstances in which the responsible authority is the scheme manager (see clause 4, subsection (3)).”***

### Departmental Response - reject

The clause 13(4) sets out that a person appointed by the responsible authority should report on certain “aims”. These aims are specified in the Bill in relation to Valuation and Cost Control processes. The person appointed to review the actuarial valuation and employer contribution rates on NILGOSC are subject to NIAO requirements. The Department’s view is that this is a technical exercise where financial or actuarial expertise is the primary requirement

rather than independence. The responsible authority for the Local Government scheme is required to include confirmation to the effect that its aims have been achieved as part of its annual reporting in accounts which are published and are subject to the independent scrutiny of the Northern Ireland Audit Office. The responsible authority for the Local Government scheme is the Department of the Environment which maintains control of the policy for the scheme. NILGOSC is the Scheme Manager. Therefore, the scenario of the responsible authority being the same as the Scheme Manager for funded schemes under Clause 13 will not arise for the Local Government Scheme.

## Clause 17 – Regulatory Oversight

### **Committee Proposal**

***“Why has the (less commonly used) confirmatory procedure been chosen for the orders made under clause 17?”***

### **Departmental Response**

Schedule 4 amends the Pensions (NI) Order 2005 to make provision in relation to the regulatory oversight of public service pension schemes. In particular, it makes provision in relation to the role of the Pensions Regulator – the UK-wide regulatory body for pensions. Given that the Regulator operates on a UK-wide basis, DSD seek to ensure, as far as possible, that the necessary legislation in GB and NI is made to the same timetable with common operative dates etc. This facilitates the issue of guidance and maintenance of up-to-date information on the Regulator’s website for GB and NI without the additional costs of separate guidance/information.

The confirmatory procedure is the standard procedure used in relation to social security and pensions instruments made by DSD, which require the approval of the Assembly. This method facilitates the maintenance of parity of timing with the corresponding instruments in GB whilst safeguarding the Assembly’s power of control over the Order.

The reason why the confirmatory procedure is required is that Clause 17 amends the Pensions (NI) Order 2005 which requires that (with certain exceptions not relevant to this query), that regulations or orders under that Order be made subject to the confirmation procedure. Article 288(6) (b) of that Order refers.

DSD propose to table any Order for approval of the Assembly as soon as possible after the Order is made and has secured Committee and the Examiners clearance. Should the Assembly not approve the Order, the Order ceases to have effect.

## Clause 21 – Consultation

### **Committee Proposal**

***“Why does the consultation requirement in clause 21 not also cover the cross-cutting orders and regulations made by DFP under powers elsewhere in the Bill (e.g. clauses 9, 12 and 31)?”***

***“Why is the Department reluctant to agree an amendment to consult ‘with a view to reaching agreement’ under clause 21, subsection (1)? Without such an amendment, is there a risk that the consultation would be less meaningful?”***

### **Departmental Response - reject**

There are four principles for effective consultation cited by case law which known as the Gunning Principles. The Department conducts its current ongoing consultations in the spirit of these principles which provide the appropriate balance for employee representation and operational efficiency with the implicit aim of reaching agreement. Sometimes agreement



is not always achievable. Also there are scheme changes where many are routine or non contentious and to report on the detail of consultation for the purpose of illustrating how agreement was sought could unnecessarily compromise operational efficiency for Departments and the Assembly. The current procedures for making changes to current public service pension schemes vary from scheme to scheme. Under the Bill all future scheme changes will be made in regulations which will be subject to negative resolution procedure in the Assembly and which affords an appropriate level of Assembly scrutiny to ensure the proper consultation on scheme level changes has been completed.

## Clause 22 – Procedure for Protected Elements

### Committee Proposal

***“Why are the scheme regulations made under clause 22 not subject to affirmative resolution procedure, particularly since they will contain provision changing the ‘protected elements’ of the scheme (as described at clause 22, subsection (5))?”***

### Departmental Response

Before the scheme comes into operation, the Department must have laid before the Assembly a report providing information about:

- (a) the consultation that took place for the purposes of Article 3(2), so far as relating to the provision,
- (b) the steps taken in connection with that consultation with a view to reaching agreement in relation to the provision with the persons consulted, and
- (c) whether such agreement has been reached.”.

During Consideration Stage of the Superannuation Bill, the previous DFP Minister advised the Committee that it would be his Department’s intention to lay such a report at the same time as any amending scheme to enable the Assembly to consider all relevant information collectively and before any such scheme comes into operation”.

The same process would apply under this provision.

## Clause 23 – Procedure for Retrospective Provision

### Committee Proposal

***“Is it the case that, as drafted, the responsible authority would not have to meet the consent or consultation requirements under clause 23 if it decides that the retrospective changes that it proposes have adverse effects but that these are not ‘significant’? In such circumstances, is it also the case that only the negative resolution procedure would apply to the scheme regulations?”***

***“Given the concerns raised by the Human Rights Commission with clause 23 and the fact that it deals with accrued rights which Hutton recommended should be properly protected, how might the Department improve the legal certainty of clause 23?”***

***“While the Department argues that ‘it is the terms of ... the scheme regulations that would have to be assessed against the requirement for legal accessibility and foreseeability rather than the enabling power’ in clause 23, would it be possible to table an amendment to define ‘significant adverse effects’ on the face of the Bill? Would DFP be willing to table such an amendment in order to provide a further safeguard in the primary legislation?”***

***“While an individual may have recourse to the courts in circumstances where they have a different view on the significance of an adjustment to their accrued benefits to that of the responsible authority, to what extent does the Department consider that to be an efficient and proportionate protection?”***

#### **Departmental Response - reject**

Clause 23 requires responsible authorities to consult with the aim of reaching agreement on pension changes which would have retrospective effect. Where agreement may not be achievable the clause provides for an effective trade union veto over the change where it would have a significantly adverse effect. Trade unions will also have representation on the Pension Boards which will be involved in determining the ‘significance’ of any adverse change. In the Department’s view the protections for accrued rights and the safeguards against adverse scheme changes in the Bill are sufficiently robust. A trade union veto on every retrospective change could compromise the capability for responsible authorities to maintain scheme rules in compliance with overarching legal and policy changes.

The definition of ‘significant adverse effects’ is indeed difficult to pin down as authorities may have differing opinions on what they perceive to be a “significant adverse effect” and indeed can exercise discretion. However, the Pension Authority has an obligation to inform people affected and aim to reach agreement. If an individual has a different viewpoint on the significance of an adjustment to their accrued rights and believe that an authority has gone too far outside the parameters of determining a significant adverse effect, they have the right to a Judicial Review. It would be the Department’s view that pension authorities would not want these extreme measures to be exercised and therefore would attempt to resolve the issue prior to recourse to the courts.

Therefore, in the Department’s view the protections for accrued rights and the safeguards against adverse scheme changes in the Bill are sufficiently robust. A trade union veto on every retrospective change could compromise the capability for responsible authorities to maintain scheme rules in compliance with overarching legal and policy changes.

#### **Committee Comment**

“With reference to the DFP response to the NIHRC concerns around retrospective provisions, where it points out that the responsible authority must lay a report before the Assembly under clause 23, subsection (4). Is there any safeguard to ensure that the report is laid in sufficient time in advance of committee/Assembly consideration of the scheme regulations?”

#### **Departmental Response**

This would be a similar process as that already covered under Clause 22 on the Procedure for Protected Elements.

### **Clause 32 – Existing Public Body Pension Schemes**

#### **Committee Proposal**

***“With reference to the wording of subsection (1), Departmental officials undertook to clarify whether an amendment will be brought forward to change the term ‘may’ to must’ given the wording at clause 10 (1).”***

#### **Departmental Response - reject**

This clause requires a commencement order by the Department of Finance and Personnel to take effect. The final date for restriction of public body schemes is not yet determined. The proposed amendment would have the effect of placing a requirement on those schemes to change the current provisions for pension age prematurely.

## Response to letter of 24 October

### **Assembly Section**

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Our Ref CFP276/11-15

1 November 2013

Dear Shane

Following its meeting of 23 October the Committee requested a Departmental response on various issues connected with its consideration of the Public Service Pensions Bill. At the Evidence Session on 23rd October, officials were provided with a document, setting out in tabular form the key issues which have arisen from the Committee's Call for Evidence. Officials have now reviewed this document and consider, apart from a few exceptions, all outstanding issues will be addressed in the responses to the Committees' letters of 10th, 17th and 24th October. Any remaining issues will be addressed by officials at the Evidence Sessions scheduled for November.

A Departmental response is now attached to the letter from the Committee dated 24th October. The issues are addressed in the sequence raised in the Committee's letter to the Department.

Yours sincerely,

**Judith Finlay**

Departmental Assembly Liaison Officer

## Departmental Response to Issues Raised in Correspondence from the Committee for Finance and Personnel on 24 October 2013

### Committee Comment / Issue

*The Committee has requested a response on correspondence to the Committee from the Fire Brigades Union (FBU) on the oral evidence from Departmental Officials at the Committee meeting on 16 October. The correspondence concerns pension age for firefighters which is dealt with at clause 10 of the Bill. A copy of the Executive Summary and Recommendations of the Review of Firefighters Pension Age FBU (Williams Report) referred to in the FBU correspondence is attached at Appendix 1 to this advice paper. (A copy of the correspondence is attached separately in the associated documentation for this submission).*

### Departmental response

#### **Primary legislation**

The FBU correspondence opposes the Department's position that the primary legislation requires that the normal pension age for firefighters is 60 and has proposed an amendment to provide that the pension age be specified in scheme regulations:

The purpose of the primary legislation is to set out the high level requirements for each scheme, including pension age. For the firefighters scheme the requirement for normal pension age reflects the current position for firefighters recruited from 6 April 2006 who already have a normal pension age of 60. This is already specified in the scheme regulations. The FBU proposed amendment to the Bill would introduce a conflicting provision to the current requirement.

The FBU correspondence highlights findings of the 'Williams' report into pension age for firefighters and summarises that *"the Williams report has made clear that majority of firefighters will not reach age 60 and still be able to maintain the appropriate fitness levels, particularly female firefighters..."*

In its review of normal pension age for firefighters the Williams report made a number of findings and also made several corresponding recommendations where it deemed appropriate. The recommendations focus on regularising standards of fitness and processes for fitness assessment across fire services and how authorities can take reasonable steps to facilitate existing members who would be unable to meet those standards in the future.

For example the report recommends that *"Firefighters over the age of 55 who can no longer meet the fitness requirement could be allowed to leave early on an actuarially reduced pension. The pension should be calculated so there is no overall financial advantage or disadvantage to the firefighter (or to the pension scheme) from the member leaving before the NPA"*. ('Normal Pension Age for Firefighters - A review for the Firefighter's Pensions Committee 12 January 2013' -Executive Summary. This is attached at Appendix 1 for ease of reference.

A proportion of this group will fall under the transitional protection category and will see no change in their expected pension age. For those who do not the Public Service Pensions Bill provides for scope at secondary legislation to incorporate such variances in scheme design to facilitate this recommendation. This is the point officials addressed at the Committee meeting on 16 October.

Our approach is in line with the findings of the Williams report where it states:

*“It is up to individual FRSs (Fire and Rescue Services) to decide how to manage individuals who fall below their selected fitness standard”*

It is important to note that this review of firefighters’ pension age does not recommend a change to the current pension age for firefighters. In addition to making recommendations on standardising how fitness levels across fire services are monitored and tested. The report recommended the next review of pension age should be undertaken once fitness standard(s) have been determined and sufficient data have been collected to measure the effect of implementing these standards. The report states that it is unlikely that the review will have sufficient data until at least 2016.

### **Scottish proposal**

As a result of recent Firefighters scheme level discussions in Scotland on development of proposals for flexibilities for early departure with minimal actuarial reduction the threat of strike action on pension age has been avoided by agreement. As well as provision to vary terms for actuarial reduction, the scheme accrual rate is one of the areas where flexibility exists to modify scheme design to suit the particular workforce and could certainly need to be reviewed as a part of any proposal to vary other scheme terms.

These issues will need to be discussed in consultations with TUS at the secondary legislation stage for the firefighters scheme in Northern Ireland. Adjustment of accrual rates for the firefighters scheme overall could form part of those discussions within the context of prioritising flexibilities for early departure terms for those current members who do not qualify for transitional protections but are unable to remain in service until pension age.

### **New Firefighters Pension Scheme (NFPS) – NPA 60**

The FBU comment here reinforces the Department’s position that the secondary legislation process is the appropriate one for scheme flexibilities.

### **Actuarial reductions**

Awaiting technical input on the calculation of actuarial reductions from DHSSPS Policy Branch. This will be provided as soon as possible to the Committee.

## **Committee Comment / Issue**

*Correspondence to the Committee from the Pat McCartan, Chairperson, Independent Financial Review Panel (IFRP) on its concerns over provisions contained at clauses 30, 31 and 32 of the Bill. Mr McCartan expressed concerns that the Bill could have impacts on the Assembly Members’ Pension Scheme and in particular therefore the provisions contained at clauses 30, 31 and 32.*

### **Departmental response**

The Assembly Members’ Pension Scheme (Northern Ireland) 2000 (AMPS (NI) 2000) was established on 13 May 2000 under the Assembly Members’ Pensions Determination 2000, made by the Secretary of State under section 48 of the Northern Ireland Act 1998, by virtue of paragraph 9 of the Schedule of the Northern Ireland Act 2000. The scheme provides benefits for Members and qualifying office-holders of the Northern Ireland Assembly.

Clauses 30,31 and 32 of the Bill deal with additional schemes for existing schemes for public bodies and new schemes which would be established for those public bodies in the future. As the Assembly Scheme is neither a public body or a new scheme it is outside these definitions.

The Department sought a view from the Assembly Commission on proposals for the reform of the Assembly Members Pension Scheme in May 2013 during the pre-introduction policy scoping stage for pension reform. The Commission confirmed the Assembly Members Pension Scheme falls under the remit of the Independent Financial Review Panel which is an independent body established by an Act of the Assembly [The Assembly Members (Independent Financial Review and Standards) Act (Northern Ireland) 2011] to look at MLAs pay, allowances and pensions. The Commission also advised the Panel had indicated that they are intending to review the Pension Scheme in light of the review of public sector schemes, the review of the equivalent Westminster scheme and the Welsh Remuneration Boards review of the National Assembly for Wales pension scheme. The Department of Finance and Personnel is content with this approach and accepts the Assembly Scheme is outside the remit of the Bill.

## Committee Comment / Issue

*The Committee has requested the Department's view on each of the following five options for amending the Bill:*

1. *An amendment to prescribe the circumstances in which the Regulations can make retrospective provision. Clause 3 of the Bill currently allows retrospective provision where it considers this appropriate in relation to pensions and benefits.*

### **Departmental Response - reject**

It would be unworkable to cite in the primary legislation each circumstance where a Department would be required to make regulations which would have retrospective provision. The power for retrospection at clause 3 must operate in the context of the enhanced protection built in at clause 23. This means that a retrospective provision which would have a significant adverse effect requires the consent of Trade Unions before the proposed change could be made.

The approach at clause 3 ensures any need to return to the primary legislation unnecessarily to amend it is avoided. Where a scheme proposes any retrospective changes in its secondary legislation that legislation remains subject to the Assembly prerogative to scrutinise or pray against it where it considers this necessary.

## Committee Comment / Issue

2. *An amendment to define "significant adverse effect" on the face of the Bill.*

### **Departmental Response - reject**

An attempt to define a significant adverse effect in the primary legislation definition may have the opposite effect of what the Committee may want to see achieved. A definition in primary legislation would impede the flexibility in the current provision that allows for a case by case assessment for each proposed scheme change.

The Department is unaware of any precedent to define a 'significant adverse effect' elsewhere in primary legislation.

The comparable term "substantial" is used in primary legislation in other areas. For example Section 1 of the Disability Discrimination Act 2005 defines the meaning of a 'disability' in terms of an impairment which has a "substantial" and long-term adverse effect. The term "substantial" however is not defined.

Case Law indicates 'substantial' is held to mean "something more than minor or trivial". The threshold set therefore is not high. It is the view of the Department that the term 'significant' sets a similar low threshold which ensures an appropriate level of scrutiny of scheme proposals.

As drafted the current provision in the Bill allows the significance of an effect to be weighed on its own merits and by the authority and pension board in the case for each proposed changes.

### Committee Comment / Issue

3. *An amendment to require DFP to produce guidance detailing how it will measure significant adverse effect in relation to pensions and other benefits. This may require DFP to lay the guidance before the Assembly and to publish it before making any Regulations.*

#### **Departmental Response - reject**

As the significance of the effect to be measured will be specific to changes being proposed in each scheme it will be determined by the Responsible Authority and Pension Board for that scheme. The Department does not see its role is one to constrain that process by introducing a new statutory requirement in the Bill.

### Committee Comment / Issue

4. *An amendment to clause 24 of the Bill so that all retrospective changes to the Bill are by affirmative procedure as recommended by NIHRC.*

#### **Departmental Response - reject**

Powers for retrospective changes are common in public service pensions legislation. They are routinely used to adjust schemes to accommodate changes in law or where it would not be desirable to delay the benefit of a particular change but where time is required to consider the consequences and appropriate method of making the change. Many changes are progressive and in favour of members interests. It is often the case that the Northern Ireland schemes are introducing changes equivalent to changes already made for the equivalent schemes in Great Britain and without retrospective powers would face a delayed timescale. The retrospective powers enable schemes to effectively implement the desired changes at the appropriate time. Some examples taken from the case of the civil service scheme include: the introduction of changes which enabled civil servants to purchase additional pension amounts with effect from 1 October 2007 although the legislation was made in January 2008; a provision enabling civil servants to buy out the actuarial reduction that would normally apply to pension benefits taken early on resignation was introduced in legislation made in December 2010 but applied from 1 April 2010; changes to ensure comply with anti – age regulations were introduced with effect from April 2006 in legislation made on 27 September 2006.

Where retrospective changes are deemed to have a significant adverse effect they will be subject to affirmative resolution procedure in the Assembly. The Department considers the existing negative resolution process is appropriate for other cases where scheme changes are routine or beneficial to scheme members. The process provides the Assembly with the option to debate any proposed scheme changes as necessary.

### Committee Comment / Issue

5. *An amendment to clause 23 that deletes the word “significant” so that a safeguard would apply in relation to all adverse effects.*

#### **Departmental Response - reject**

There are safeguards in place which prevent the inappropriate use of the retrospective powers which are both internal and external to the Bill. to. The power to interfere with

benefits that have accrued is already limited substantively by the protections of the Human Rights Act 1998 and the associated European Convention of Human Rights.

The Department considers that retrospective changes will in practice very rarely produce adverse effects for members. However, it is important to strike a balance between providing protections to members while ensuring that schemes can operate efficiently and effectively. Where a retrospective effect would be deemed significant then the requirement for trade unions will be required and the higher process for consultation will be engaged.

The approach maintains operational efficiency in schemes by allowing minor and technical retrospective changes to be made subject to the normal consultation requirements. The threshold for a significant adverse effect can be argued to be sufficiently low to ensure any effect of measurable detriment to a scheme member will be observable. If the significance of an adverse effect is not apparent i.e. the effect is insignificant it may be so trivial or minor so as not to be measurable in any effective way. It may be impossible to observe, or to describe objectively. A trade union veto on every minor or technical retrospective change could compromise the capability for responsible authorities to maintain their scheme rules in compliance with overarching legal and policy changes.

## Issues which officials undertook to respond to arising from the Evidence Session on 23rd October 2013.

### Committee Comment / Issue

***The Committee requested a definition of discretionary benefits and examples. Clause 3(3)(c) refers.***

#### **Departmental Response**

Many schemes have some benefits which are not automatic, but which can be awarded at the trustees' and/or employer's discretion. They must decide on whether, and if so to what extent, discretionary benefits are to be included within the benefits to be valued. In doing so, they must have regard to:

- any established custom for awarding them; and
- any consent requirements needed (which will usually involve the employer).

A typical discretionary benefit is the award of pension increases over and above what the rules of the scheme automatically provide; for example, early retirement on favourable terms with consent and also death benefits. Once a discretionary benefit is awarded, it becomes part of a member's accrued benefit. Awarding discretionary benefits sometimes requires the consent of the sponsoring employer.

When considering the extent to which discretionary benefits are to be included, employers and trustees should:

- make a decision in relation to each discretionary benefit they can provide under the scheme's rules;
- understand the relevant scheme rule which provides for the award of the discretionary benefit in question, bearing in mind that they may need to take legal advice;
- consult any person (usually the employer) whose consent is needed;
- consider the past history and future intentions with regard to the award of the benefit, taking into account the relevant circumstances (for example, the scheme's funding if appropriate) which influenced or could influence the award; and
- take into account any agreed policy relating to the award of the benefit.



## Committee Comment / Issue

***Committee has suggested replacing “satisfied from time to time” with a specified period. Clause 5(5)(a) refers.***

### **Departmental Response - reject**

The requirement for Scheme Managers to be “satisfied from time to time” that none of the members of the Board have a conflict of interest is an ongoing requirement, not a requirement for occasional review. The Department consider that a time limit could not sensibly work and would weaken the requirement. It is anticipated that the Pensions Regulator Guidance, will state that potential conflicts have to be reported when they arise, not within a specified time period of them arising (otherwise conflicts could be unmanaged for the intervening period). The scheme regulations should establish a compliant requirement (e.g. for members to report conflicts as soon as practicable).

Under the Public Service Pensions Bill the Pensions Regulator is responsible for regulating scheme compliance with conflict of interest requirements of the Bill (by virtue of making the provision part of the ‘pension legislation’ within the Pension Regulator’s scope), then the Pension Regulator would be able to take their full suite of action. This would broadly entail the issuing of improvement notices (which the scheme must comply with), appointing a skilled person to support the pension board, issuing fines for breaches or prosecuting in court

## Committee Comment / Issue

***The Committee requested details of sanctions for non-compliance. Clause 5(5)(a) and 5(5)(b.) refers.***

### **Departmental Response**

The Committee had requested detail of what the sanctions would be for failure to comply with the Guidance on Conflict of Interest and as already addressed sanctions will apply as above and are summarised in the following attachment.

<http://www.thepensionsregulator.gov.uk/about-us/our-powers.aspx>

## Committee Comment / Issue

***Clause 7. Why scheme advisory board does not include provision to include employer representatives and member representatives in equal numbers.***

### **Departmental Response**

The purpose of these boards is to advise the responsible authority on matters that they commission them to advise on. It is the Departmental view that the responsible authority should be free to request advice from whoever they consider appropriate. Requiring the board membership to be balanced in the way suggested by the Committee could constrain the board’s ability to provide appropriate advice. For example, they may want actuarial advice on the impact of a proposed change, which neither employer or employee representatives would be in a position to provide.

However, as pointed out at previous Evidence sessions the secondary legislation process provides scope for departments with scheme responsibilities and their TUS

to further refine scheme level arrangements as appropriate or as suited to their business in the course of their overall consultations on new scheme regulations.

## Committee Comment / Issue

### ***Past Practice Examples of public service pension scheme negative resolution.***

#### **Departmental Response**

Over the past 2 years each of the public service pension schemes have introduced on average approximately seven statutory rules under negative resolution. In the majority of cases these rules introduced minor technical amendments to further clarify the operation of certain regulations.

The only statutory rules of any substance introduced were those in relation to the increased member contributions.

This number is not particularly substantial but each individual statutory rule takes approximately 8 months to introduce under negative resolution. This timescale is as a result of the requirement to consult with both the stakeholders and their statutory committees.

Affirmative resolution would take a scheme into a new direction where further enhanced consultations with stakeholders would be appropriate and progress of the rule would be guided by the Assembly timetable.

## Appendix 1

### Normal Pension Age for Firefighters

#### A review for the Firefighter's Pensions Committee 12 January 2013 Executive Summary and Recommendations

#### "Executive Summary

##### **Introduction**

Firefighters initially had a compulsory pension age of 60 years established by the Fire Brigades' Pensions Act 1925. This was lowered to 55 years for firefighters up to and including the rank of Station Officer (now Watch Manager B) by subsequent legislation. However the New Firefighters' Pension Scheme Regulations 2006 closed the 1992 scheme to new entrants and introduced a Normal Pension Age (NPA) of 60 years. The Hutton report of 2010 recommended that the Government should consider setting a NPA of 60 years as the benchmark for all Uniformed Services Schemes.

The Department of Communities and Local Government Firefighters' Pension Scheme: Heads of Agreement of 2012 includes a requirement for the NPA to be subject to regular review, informed by research carried out by the Firefighters' Pension Committee (FPC).

All previous decisions on a pension age have been based on qualitative assumptions about fitness. No previous reviews have attempted to quantify the numbers expected to be fit leading up to and at the NPA. Other nations have a wide variety of pension ages for firefighters and there is no evidence that any of these nations have attempted a quantitative assessment of the evidence in order to determine a pension age based on physiology and medical fitness.

This paper reviews and analyses the evidence for changes in fitness with age, and for changes in prevalence of chronic disease with age. It quantifies these changes in order to produce a model that gives estimates for numbers likely to be aerobically fit at an NPA, both for firefighters who do not maintain physical fitness and body mass index as they age and for firefighters who do.

In order to create this model, a number of assumptions have been made, so the final figures given are estimates, not guaranteed numbers. The review has been provided with data from a substantial number of Fire Services, and the estimates produced fit well with the actual data.

This is not a political review of the changing approach to pensions, but a scientific review of the evidence of how capabilities change with age. The work has not been undertaken in isolation; it was essential that the UK Fire and Rescue Services (FRS) and firefighters were given an opportunity to comment and inform the authors. The FRSs have provided a wealth of data as well as advice on structures and roles. The Fire Brigades Union has also provided essential research papers, data and comment. Richard Stevenson has collected and provided data from a number of the

FRSs, and wrote Chapter 10. It is important to recognise the part that everyone has played in producing this work, but also to recognise that the summary and conclusions are made by the primary authors alone. The additional members of the review board have contributed greatly, but this paper does not represent their opinions and they have not endorsed the findings or the recommendations.

##### **Cardiorespiratory fitness**

The most important consideration is physical fitness for role. In order to produce definitive answers, the FRSs must have a defined fitness standard or standards. It does not yet have

any clearly defined and universally agreed standard(s). A study is currently in progress, sponsored by the Chief Fire Officer's Association, to develop clear measurable standard(s) but this will not report until 2013/4. Meanwhile a number of FRSs use an aerobic fitness standard that estimates a firefighter's maximum rate of oxygen uptake ( $\text{VO}_{2\text{max}}$ ), a universally recognised measure of aerobic fitness. The general standard used by many FRSs is a minimum fitness level of  $42 \text{ mL kg}^{-1} \text{ min}^{-1}$ , while some adopt an 'at risk' standard of  $35 \text{ mL kg}^{-1} \text{ min}^{-1}$  where firefighters are allowed to continue on operational duties for a limited period while they undergo remedial fitness training. This review has taken  $42 \text{ mL kg}^{-1} \text{ min}^{-1}$  for the aerobic fitness benchmark for the recommendations, but specifically does not endorse this as a recommended standard for firefighting, and acknowledges that aerobic fitness is only one component of total firefighter physical fitness. The recommendations of this review are therefore provisional until clear standard(s) are developed, encompassing strength and muscular endurance requirements as well as aerobic fitness requirements.

Studies show that below an aerobic fitness standard of  $42 \text{ mL kg}^{-1} \text{ min}^{-1}$  the risk of sudden catastrophic cardiac events increases, and below the level of  $35 \text{ mL kg}^{-1} \text{ min}^{-1}$  the increase is significant, with a risk of sudden death particularly while undergoing high levels of physical exertion. There is a strong argument that FRSs have a duty of care to their firefighters and to the general public to minimise this risk by maintaining an appropriate and safe level of aerobic fitness.

Physical fitness is known to decline with age. Studies show that without regular physical activity this decline is substantial and progressive from age 20. A model developed from a number of major academic studies estimates that for the general male population, around 60 % of men meet the standard of  $42 \text{ mL kg}^{-1} \text{ min}^{-1}$  at age 25, but this drops to 35 % at age 35, 15 % at age 45 and less than 1 % at age 60. Within these studies, it is shown that the small subgroup (<25 %) that could maintain weight and physical activity levels would maintain a mean fitness of above  $42 \text{ mL kg}^{-1} \text{ min}^{-1}$  to age 70, assuming they start with a  $\text{VO}_{2\text{max}}$  above  $49 \text{ mL kg}^{-1} \text{ min}^{-1}$  at 25 years. The drop in fitness seen in the general population is mostly due to unhealthy lifestyle choices, weight gain and lack of physical activity.

A number of recent studies have suggested that firefighters are no fitter than the general population. They are as overweight as the general population, but have fewer individuals in the higher category of obesity than the general population. Our modelling of research papers combined with our limited data from the FRSs shows that UK firefighters are physically fitter than the general population, with an estimated mean  $\text{VO}_{2\text{max}}$  of  $\sim 50 \text{ mL kg}^{-1} \text{ min}^{-1}$  being maintained until 35 years of age.

The models estimate the number of firefighters who will be unable to meet the minimum aerobic fitness standard as they age. In the worst case scenario, where

firefighters follow the normal population changes in physical activity levels and body mass index with ageing, 85 % would be unfit for duty at 55 years, increasing to 92 % at 60 years. In the best case scenario, where firefighters maintain their physical activity levels and body mass index as they age, 15 % would be unfit at 55 years, increasing to 23 % at 60 years. Those who fall below the standard at ages 55 and 60 years are likely to have been close to  $42 \text{ mL kg}^{-1} \text{ min}^{-1}$  when joining their FRS. It is up to individual FRSs to decide how to manage individuals who fall below their selected fitness standard. Current practice in many FRSs is to allow them to continue on duty 'at risk' while undertaking remedial training, and the great majority are able to increase their fitness levels to the appropriate standard within a few months.

Recent data collected from four FRSs found at 50-54 years of age, 51 % ( $n=417/822$ ) of firefighters were below  $42 \text{ mL kg}^{-1} \text{ min}^{-1}$ . At 55-60 years, 66 % ( $n=70/106$ ) of firefighters were below this minimum standard.

Fitness in women is significantly lower than for men at all ages; however the decline in fitness follows a similar rate when activity levels and body mass index changes are similar. The same model can therefore be used for both sexes for the decline in aerobic fitness.

There will however be fewer women with a substantially higher starting fitness than the minimum standard required, so more women are likely to drop below the required aerobic fitness standard as they age.

Firefighters in management roles of Station Manager and above have less requirement for a high level of operational fitness, and no significant problems with fitness are expected in relation to age in this group, assuming a recommended minimum VO<sub>2</sub>max standard of 25 mL kg<sup>-1</sup> min<sup>-1</sup> is required in the role.

### **Strength**

There is no compulsory strength standard for selection to the FRS, and in order to develop a benchmark for the review, the ladder lift test from the National Firefighter Selection Test was used as a standard. The model for strength change with age was developed from studies of grip strength and assumed no additional physical training. The model showed that by age 55, 10 % of men and 30 % of women would fail the test, and by age 60 the figures would be 20 % and 40 % respectively. These figures would be expected to reduce significantly if a policy of routine physical training which included strength training was adopted across all Fire Services.

### **Medical health**

A medical model was produced for the most important chronic medical conditions likely to affect fitness for firefighting across the age range 45-75 in the general population. Ill health retirement (IHR) data for 2007-12 from 38 FRSs were then compared with predictions from the model. The IHR data demonstrated that firefighters are substantially healthier than the general public. This would be explained by the significantly fewer very obese firefighters than in the general population and the higher levels of aerobic fitness. Increasing the NPA from 55 to 60 is expected to result in an additional 30-40 IHRs assuming there are 5000 firefighters in the age range 55-59. There are expected to be substantially more firefighters with chronic disease who have not reached a point where IHR is appropriate. Assuming 120 firefighters with chronic disease who are not fully fit, this would represent 2.5 % of age group 55-60.

**Structural implications, reasonable expectations and management issues** A final decision on the implications of the appropriate NPA can only be made when a decision is made on minimum fitness standard(s). If a fitness training programme is adopted across all FRSs, this may require additional fitness advisers and may have minor implications in relation to overall manning levels. The increase in numbers medically unfit, and in IHR numbers, is not expected to have a substantial effect on operational effectiveness.

There will be a significant number of firefighters who expected to retire at age 55 and will have difficulty maintaining fitness beyond this age. Among those who have joined on the 2006 pension scheme there will also be some who will have difficulty maintaining fitness, and there are likely to be around 2.5 % who are medically unfit above age 55 but who do not meet the criteria for IHR. There is likely to be a substantially larger proportion of women firefighters who are physically and/or medically unfit over age 55. Allowing firefighters to leave after age 55 on a pension that is actuarially reduced from age 60 without any additional penalty could be considered a reasonable way to manage expectations, and to manage any potential discriminatory issues.

## **Recommendations**

**Fitness standard(s).** It is essential to determine minimum role-related fitness standard(s) across the UK FRSs.

**Fitness selection at recruitment.** FRSs should consider informing applicants that those whose fitness is close to 42 mL kg<sup>-1</sup> min<sup>-1</sup> are unlikely to maintain fitness to NPA unless they are able to increase their level of physical activity and/or reduce their body mass index.

**Fitness assessments.** All FRSs should conduct regular fitness assessments for all firefighters to ensure fitness for role is maintained.

**Fitness training.** All FRSs should implement regular fitness training. We recommend 2.5 hours a week of fitness training should be incorporated into the daily routine of wholetime firefighters. Appropriate support and opportunities for fitness training should be provided for retained firefighters.

**Early leavers.** Firefighters over the age of 55 who can no longer meet the fitness requirement could be allowed to leave early on an actuarially reduced pension. The pension should be calculated so there is no overall financial advantage or disadvantage to the firefighter (or to the pension scheme) from the member leaving before the NPA. This would help address any equality issues in relation to women firefighters and disabled firefighters.

**Ill health retirement.** In order to avoid any advantages to IHR, those who become permanently medically unfit for firefighting below age 55 could take their pension early at the same rates as those who leave early because they are unable to meet the fitness requirement.

**Ill health retirement for a qualifying injury.** Where a firefighter becomes permanently medically unfit for firefighting because of a qualifying injury, the current arrangements outlined in the New Firefighter Pension Scheme Regulations 2006 should continue.

**Ill health retirement data collection.** All FRSs should routinely collect IHR data annually, to include as a minimum the age, role, gender, medical diagnosis and duration of service of the firefighter. An appropriate body should be identified to collect and analyse the data and report annually on their findings.

**Fitness data collection.** All FRSs should routinely collect fitness data annually; the specific data to be collected should be determined by the current review into fitness standards. An appropriate body should be identified to collect and analyse the data and report annually on their findings.

**Further NPA reviews.** The next review should be undertaken once fitness standard(s) have been determined and sufficient data have been collected to measure the effect of implementing these standards. It is unlikely that the review will have sufficient data until at least 2016.

**Fitness standard(s).** It is essential to determine minimum role-related fitness standard(s) across the UK FRSs.

**Fitness selection at recruitment.** FRSs should consider informing applicants that those whose fitness is close to 42 mL kg<sup>-1</sup> min<sup>-1</sup> are unlikely to maintain fitness to NPA unless they are able to increase their level of physical activity and/or reduce their body mass index."

## DFP letter dated 11 November 2013

**Assembly Section**

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Mr Shane McAteer  
Clerk  
Committee for Finance and Personnel  
Room 419  
Parliament Buildings  
Stormont

Our Ref CFP277/11-15

11 November 2013

Dear Shane

Following its meeting of 6 November which DFP officials attended the Committee requested an urgent Departmental response on various issues which arose at the Evidence Session.

A Departmental response is now attached.

Yours sincerely,

**Gearoid Cassidy**

Departmental Assembly Liaison Officer

## Departmental Position on Issues Arising from the Committee for Finance and Personnel Evidence Session with DFP Officials on 6 November 2013

### Committee Comment/Issue

#### Civil Service Pensions Service Delivery Project

*The Committee has requested detail of current considerations and options in respect of Civil Service Pensions Branch staff in Waterside House, including the number of staff potentially affected and detail of the extent of any redeployments.*

#### **Departmental response**

Civil Service Pensions currently use two computer systems. One system administers current member records up to and including award of benefits. The other system administers deferred and pensioner member records and provides a pensioner payroll, including financial reporting on expenditure from the scheme.

The contracts in relation to these systems are approaching termination. A project, known as the Future Service Delivery Project has been established to procure a replacement solution.

The new solution must perform end-to-end pension administration and pensioner payroll and incorporate significant self-service facilities for the membership, in order to meet best practice in pension administration going forward. The new solution will be required to demonstrate value for money and meet the required service standards.

The scope of the project is confined to the pension administration and pensioner payroll functions performed in Civil Service Pensions. The remaining functions performed by the division are not within scope of the project, including:

- scheme management;
- policy and legislation;
- communications policy and publications (including the pensions website);
- contract management;
- resource accounting for the scheme; and,
- actuarial valuation management and reporting.

Although the reform of public service pension is not the main driver for the project, it is relevant; the new solution must be in place to facilitate the implementation of the new pension scheme for civil servants from 1 April 2015. HM Treasury have stated they will impose a penalty to be offset against NI Block funding, which for the civil service scheme is estimated at approximately £62 million per annum, if the new scheme is not implemented on this date.

The project is being managed under NI Civil Service Project Management standards and in line with the NI procurement rules, taking account of the Northern Ireland Guide to Expenditure Appraisal and Evaluation (NIGEAE). The NIGEAE requires that all options for procurement of replacement services must be considered, including outsourcing.

In June 2013, Minister Wilson, following the completion of the Strategic Outline Case, which established the need for the project, gave approval for the next stage. The next stage was an Early Market Engagement exercise which was completed in July 2013. The responses from



the market to the exercise proved that there is appetite to meet the requirement by either provision of:

- an IT system to be operated by civil servants, whether housed in the NI Civil Service or provided via a communications link; or
- a managed service where the work would be performed by the provider company under contract, whether immediately or by phased implementation over the period of the contract.

The next stage in the procurement process is to produce an Outline Business Case (OBC), examining the long list of options against the criteria of achievement of project objectives, monetary and non-monetary benefits, risks and overall Value for Money. The OBC for the Civil Service Future Service Delivery Project is still in development. The two broad options are as outlined above, i.e. a new system or a managed service.

The OBC is subject to internal DFP Finance approval as well as DFP Supply approval. When these stages are complete, the preferred option will be submitted for the DFP Minister for his consideration and approval.

The next phase of the procurement process will be an advertisement in the Official Journal of the European Union (OJEU). Until the approvals process is complete, the preferred option is subject to change. This means that no decision has been made at this stage. The OBC is currently with DFP Finance for consideration and therefore the preferred option is not yet determined.

It is normal DFP protocol for the OBC to remain non-disclosable on grounds of policy in development until the final decision has been made. It is therefore not possible to provide any further detail at this time.

NIPSA have been consulted since the project was first established in December 2012. TUS and staff in Civil Service Pensions have been informed of the options under consideration. NIPSA and staff are aware that, regardless of the preferred option, less staff will be required in Civil Service Pensions in the future.

Civil Service Pensions currently employ 96 staff, not all of whom are employed on the pension administration and payroll functions. The actual reduction in staff will depend on the preferred option to be procured, which is not yet known. The media quotations of '80' staff losing their jobs are incorrect.

Staff who operate the current system and unions are fully aware that a new and more technologically advanced integrated system with self service facilities will require less staff to administer it than are currently employed to manage the existing outdated systems. Precise numbers of staff are not known at this point

Any reduction in staff will be managed, over time, in line with normal NI Civil Service policies in the HR Handbook, including natural wastage. For example, staff leaving

the branch, would be replaced on a temporary basis. Redeployment policies are designed to ensure that staff at AA and AO grades are offered posts in the general locality of the post they are leaving. Management in Pensions will work with Departmental HR in the redeployment of any surplus staff. It should be noted that there are recruitment and promotion competitions in progress which should create vacancies to which surplus staff may be redeployed.

As stated at the session on 6 November, Officials are happy to attend a further evidence session in respect of this matter if that would be helpful.

## Public Service Pensions Bill

### Committee Comment/Issue – Clause 24 (1) (C)

*The Committee has requested detail of why affirmative resolution is reserved for holders of judicial office under clause 24(1)(c).*

#### **Departmental response**

The provisions at Clause 24 set out circumstances where affirmative procedure will apply for regulations for Judicial Offices and also for regulations made for the other public service schemes.

The current position is that the Department of Justice does not make scheme regulations for Judicial Offices and the majority of Judicial Offices currently have pension provision made in primary legislation maintained by the Ministry of Justice in Great Britain. The Bill makes provision for the Department of Justice to make regulations for pension schemes for Judicial Offices should this be required in the future.

Clause 24(1)(c) replicates the provisions for parliamentary control for regulations for Judicial Offices that apply in the Westminster Public Service pensions Act 2013, to cover the eventuality that they may be required in the future. There is no immediate impact.

Prior to the Public Service Pensions Act 2013 pension arrangements for the Judiciary were made in primary legislation, most notably the Judicial Pensions and Retirement Act 1993 and the Judicial Pensions Act 1981. The Act moves judicial pension arrangements into secondary legislation. To account for the move from primary legislation to secondary legislation HM Treasury adopted the approach that changes in the new scheme should remain subject to the affirmative procedure in cases where there could be a detriment to members.

Under subsection 24(1) all scheme regulations are subject to the affirmative procedure if they amend primary legislation and under subsection 24(3) if they amend both primary and secondary legislation together. Given that consequential amendments to previous Judicial pensions legislation would require an amendment of primary legislation the affirmative resolution procedure is appropriate.

Affirmative procedure does not apply for all regulations for Judicial pensions under the Bill. Subsection 24(1)(c) specifies that scheme regulations for a scheme relating to holders of Judicial Office will be subject to negative resolution in cases where those regulations are deemed to be minor or wholly beneficial to members. This is essentially the same process applying in general for non detrimental scheme regulations for the other public service employments covered by the Bill (See subsection 24(2)).

Additionally subsection 24(1) requires that the affirmative procedure will also apply in regulations for the other public service schemes under certain circumstances where a proposed change may be detrimental.

Therefore the higher level of Assembly scrutiny will have effect in both judicial schemes and the other public service pension schemes in cases where a proposed change may be deemed to be of detriment to scheme members.

## Committee Comment/Issue

*The Committee requested specific examples addressing where the negative/affirmative process would apply as specified in clause 24(3).*

### Departmental response

It is common for responsible authorities to make scheme regulations which combine separate scheme changes and which contain multiple schedules. For example, legislation to amend the Civil Service pension scheme may contain routine technical changes relating to an overarching HMRC requirement for how pension benefits are treated for tax purposes in one schedule and a substantive change to increase permitted reckonable service limits for scheme members. Currently the negative resolution process is the common control for public service scheme changes and therefore the regulations which would contain these changes would be subject to the negative resolution procedure.

The Bill will introduce a new requirement for affirmative procedure to apply for some scheme changes. Subsection 24(3) is intended to clarify and safeguard the requirement that in each case where proposed regulations would combine scheme changes normally subject to negative resolution with any scheme change deemed to have a retrospective and significant adverse effect for scheme members, or which would amend primary legislation, the affirmative procedure will be made to apply.

It should also be noted that negative resolution still provides for Assembly scrutiny, in that the Assembly can debate, or if need be, pray against the legislation if they choose.

## Committee Comment/Issue

*The Committee requested that officials provide more detail in response to the Committee's suggestion to amend Clause 9(1)(b) to state that a revaluation be by reference that „reflects a change in prices or earnings (or both) in a given period.*

### Departmental response

The measures used to reference changes in prices and earnings are the published Government indices such as the Consumer Prices Index and the Retail Prices Index. Their purpose is to reflect real time changes in prices and earnings. These published indices are established measures and are used to inform the uprating of earnings and benefits and pensions in annual orders made by the Department of Social Development and the Department of Finance and Personnel. The orders that are made correspond with the overall changes made by HM Treasury generally. This can also be a requirement in the parent legislation. For example, Section 132 of the Social Security Administration (Northern Ireland) Act 1992 which provides for uprating of benefits specifies that “*Whenever the Secretary of State makes an order under section 150 of the Great Britain Administration Act the Department may make a corresponding order for Northern Ireland*”. The addition of ‘reflects’ would not add to the already established procedure.





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Appendix 5

# Research Papers





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## Research and Information Service Briefing Paper

24 June 2013

**Michael Heery, with Eileen Regan and Michael Potter**

# Public Service Pensions Bill Paper

**NIAR 41-13**

This Research Paper provides background on the Public Service Pensions Bill, which is to be debated at Second Stage on 25 June 2013.

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

*Research and Information Service briefings are compiled for the benefit of MLAs and their support staff. Authors are available to discuss the contents of these papers with Members and their staff but cannot advise members of the general public. We do, however, welcome written evidence that relates to our papers and this should be sent to the Research and Information Service, Northern Ireland Assembly, Room 139, Parliament Buildings, Belfast BT4 3XX or e-mailed to [RLS@niassembly.gov.uk](mailto:RLS@niassembly.gov.uk)*

## Executive Summary

On 17 June 2013, the Public Service Pensions Bill (the Bill) was introduced into the Assembly by the Minister of the Department of Finance and Personnel (DFP). This paper is to facilitate Members' consideration of the Bill.

The paper considers how the present reforms of public service pensions in Northern Ireland (NI) are based on reforms implemented by the current and previous Westminster Governments; most recently in the form of the Public Service Pensions Act 2013 (2013 Act). All such reforms seek to decrease the cost of public service pensions as a proportion of Gross Domestic Product (GDP).

Similar to the Westminster 2013 Act, the Bill proposals – as introduced - are broader in nature than changes implemented in this area in the past. The previous reforms were predicted to deliver significant savings in the cost of public service pensions as a proportion GDP. The currently proposed reform – the Bill – is not intended to deliver the same scale of savings. However, the Bill does attempt to address structural deficiencies that have created unfair schemes, arguably in terms of both their delivery of benefits to scheme members, and their sharing of scheme costs between members, employers and the taxpayer. (Section 1)

The Bill is prompted by Westminster's enactment in April 2013 of the *Public Service Pensions Act 2013*. The three Devolved Administrations in the United Kingdom (UK) are expected to implement similar changes to their own public service pension schemes, given that the convention of parity is usually observed by the UK central and devolved governments in the area of pensions. If parity is not followed, Her Majesty's Treasury advised the DFP Minister that NI should be prepared for reductions in its Block Grant.<sup>1</sup> This paper considers the passage of the 2013 Act through Westminster; as well as what occurred in Scotland and Wales. (Section 3)

In NI there was debate about the issue of having a Legislative Consent Motion in the Assembly to enact in NI the provisions of the 2013 Act. However, this was ultimately rejected, and the Assembly has introduced its own separate legislation to implement public service pension reform in NI. (Section 2)

Finally, this paper raises a number of key issues for consideration about the contents of the Bill, as introduced. These issues are intended to enhance Members' understanding of the Bill's provisions. (Section 4)

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1

[http://www.dfpni.gov.uk/civilservicepensions-ni/policy\\_consultation\\_document-2.pdf](http://www.dfpni.gov.uk/civilservicepensions-ni/policy_consultation_document-2.pdf)



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## Introduction

This Bill Paper is to inform Members' consideration of the Public Service Pensions Bill (the Bill), which was introduced in the Assembly by the Minister of the Department of Finance and Personnel (DFP) on 17 June 2013.

Within Northern Ireland (NI) there are currently 215,760 employees working within the public services – around 31% of the total workforce.<sup>2</sup> The Bill, as introduced, will create a new public service pension system for those working across the public services in NI.

The Paper first outlines background information about recent public service pension reform throughout the UK. Thereafter the Paper explains how this reform has progressed in NI, specifically in relation to the Bill, as introduced. This is followed by a comparative perspective on how reform has been managed throughout Great Britain (GB). Finally, the Paper outlines key issues that are central to Members' consideration of the current Bill's provisions, as introduced.

Both the *Belfast Agreement* and the *Northern Ireland Act 1998*, established public service pensions as falling within the 'parity' convention. This convention is intended to ensure a consistent UK-wide approach for certain policies and legislation. When presented with policy proposals in areas governed by the parity convention, legislators within Devolved Administrations have to decide whether:

- To adhere to the parity convention and enact legislation mirroring comparable legislation in Great Britain (GB); **or**,
- To depart from parity and enact legislation that is different from the given GB legislation.<sup>3</sup>

Any decision to depart from parity would be based upon the view that specific local needs or circumstances make the proposed GB legislation unsuitable. Where such a decision is made, the consequence is that any extra costs incurred in developing local legislation will be funded through a commensurate reduction in the funding available to that Devolved Administration.

## 1 Background

The current program of public service pension reform has been driven by the reports issued by the Independent Public Service Pensions Commission (IPSPC).<sup>4</sup> The work of the IPSPC builds upon previous reforms of public service pensions implemented by the UK Labour Government between 2005 and 2010, and the UK Coalition government since 2010. This section presents some background information on the current public service pension landscape in GB and NI. It provides a brief outline of previous reforms, and describes how the current reform proposals have emerged.

### 1.1 Pensions Landscape

It is possible to observe certain characteristics of the current public service pension landscape which stand in contrast to the characteristics of the private sector pension landscape.

In terms of having any sort of pension, it is more common for public service employees to have an associated pension scheme than in the private sector. Around 17% of public sector

<sup>2</sup> [http://www.detini.gov.uk/qes\\_statistical\\_bulletin\\_-\\_march\\_2013\\_pdf\\_.pdf](http://www.detini.gov.uk/qes_statistical_bulletin_-_march_2013_pdf_.pdf)

<sup>3</sup> RalSe, The Issue of "Parity When Legislating in the Northern Ireland Assembly: Key Determinative Factors". This paper is included within the materials provided at the "Assembly Scrutiny of Public Finance Workshops"; which were compiled and developed by RalSe in 2013 as part of the Politics Plus Programme for the Northern Ireland Assembly Legislative Strengthening Trust.

<sup>4</sup> The IPSPC issued their Interim Report on 7 October 2010 ([http://www.hm-treasury.gov.uk/d/hutton\\_pensionsinterim\\_071010.pdf](http://www.hm-treasury.gov.uk/d/hutton_pensionsinterim_071010.pdf)) and their Final Report on 10 March 2011 ([http://www.hm-treasury.gov.uk/hutton\\_final\\_100311.pdf](http://www.hm-treasury.gov.uk/hutton_final_100311.pdf)).

employees have no pension provision known to their employer, compared to around 67% in the private sector.<sup>5</sup>

In terms of the types of pension scheme available to employees, it is also possible to identify differences between the sectors. The following paragraphs highlight these differences.

There are two main types of pension – Defined Benefit (DB) and Defined Contribution (DC). A DB scheme is one where the pension value is linked to the salary paid to an individual over their term of employment – either the value of their final salary, or the average value of their salary over their term of employment. A DC scheme is one where the value of a pension is determined by the value of contributions made by employee and employer over the employee's term of employment. DB schemes are considered to be more generous to employees, and more onerous on employers.

DB pension schemes are much more common in the public sector, with DC schemes more common in the private sector. Whilst around 80% of public sector jobs have an associated DB pension; in the private sector the figure is around 10%.<sup>6</sup>

A further distinction between types of pensions is whether the scheme is funded or unfunded. Public sector DB schemes tend to be unfunded – only Local Government pensions schemes among the main public service pension schemes are funded. A funded pension scheme is one where the contributions made by employees and employers are paid into a fund, which is accumulated and invested in order to meet the required payments. Unfunded schemes operate on a 'pay as you go' basis, and there is no fund created in which to accumulate contributions. Pension payments are made by relevant Government Departments for their former employees. Contributions from current employees are received and netted off the total value of payments made. It is important to note that the payments received are not related to the payments being made. Those payments being **made** to former employees relate to liabilities incurred in the past. The payments which are **received** from members are contributions from current employees for pensions being accrued for payment in future.

Two key components are used to calculate the value of an individual's pension. The first component is the "accrual rate". The accrual rate determines the proportion of one year's salary which should be paid out as pension. For example, an accrual rate of 1/50th means that for each year of service an employee will accrue 1/50th of their salary as pension. Therefore a person who was employed for 30 years would receive a pension worth 30/50th of their salary.

The second key component is the "uprating factor". This is the figure that is used to adjust the value of pension earned in line with inflation. The section below on previous public service pension reform contains details of the UK Government's decision to switch from using the Retail Prices Index (RPI) to the Consumer Prices Index (CPI), and the impact of this decision on the value of pensions.

At present the accrual rate and uprating factor vary across different schemes: some schemes have lower accrual rates, but compensate for this with uprating factors above the CPI base.

## 1.2 Need for Reform

The key reason why there has been a perceived need for reform of public service pensions has been the significant increase in the cost of those pensions in recent years. Between 1999-2000 and 2009-10, the amount of benefits paid out by the five largest schemes in the UK increased by 32%.<sup>7</sup> In terms of total expenditure as a proportion of Gross Domestic

5 ONS ASHE pensions table, P1.1 (<http://www.ons.gov.uk/ons/rel/ashe/annual-survey-of-hours-and-earnings-pension-tables/2011-provisional-results/index.html>)

6 ONS ASHE pensions table, P1.1 (<http://www.ons.gov.uk/ons/rel/ashe/annual-survey-of-hours-and-earnings-pension-tables/2011-provisional-results/index.html>)

7 IPSPC Interim Report, 7 October 2010, pg 8

Product (GDP), the cost of public service pensions had increased from less than 1% in 1970 to over 2% in 2010.<sup>8</sup> In December 2004, HM Treasury (HMT) predicted that the cost of pensions would continue to increase during the next fifty years, reaching around 2.3% of GDP in 2030.<sup>9</sup>

The key driver of the increasing cost of public service pensions has been the increasing longevity of former employees. The consequence of this is that pensions are paid out over a longer period than they would previously have been expected to, and that more people who are entitled to public service pensions are alive at the same time. It is argued that the rules governing public service pension schemes have not kept pace with these demographic changes in society.

Such demographic changes are clearly evident in NI. In 1900 the average life expectancy was 47 years.<sup>10</sup> By 2010 the average life expectancy for females had increased to 81 years, and for males had increased to 77.<sup>11</sup> In terms of the total number of people living aged over 65 years, in 1961 there were 144,522 people. In 2011, there were 266,255 people.<sup>12</sup>

The predictions in the first paragraph of this section - concerning the cost of public service pensions above - were made prior to reforms implemented by the UK Labour and Coalition Governments between 2005 and 2010. The IPSPC Interim Report in 2010 predicted that when the consequences of these previous reforms were taken into account, that the value of public service pensions as a proportion of GDP had already peaked. The impact of these reforms meant that the value of public sector pensions would fall from around 1.9% in 2010, to around 1.4% of GDP by 2060.<sup>13</sup>

### 1.3 Labour 2005-10 Reforms

The UK Labour Government negotiated changes to all of the main public service pension schemes between 2005 and 2010. Whilst the details of reform are specific to each of the individual schemes, it is possible to identify some common features of the reforms implemented by Labour:<sup>14</sup>

- Survivors' benefits were modified in a number of ways, including their extension to cover unmarried partners;
- Changes in contribution rates, as well as the introduction of contribution rates tiered by pay, for NHS and local government schemes;
- Increases in the pension age; and,
- The introduction of "cap and share" arrangements (see below).

"Cap and share" arrangements were intended to limit the liability of the taxpayer to increases in the costs of providing public service pensions:

*The cap and share policy is designed to ensure that the cost pressures associated with the rising cost of providing pension scheme benefits (such as improving longevity) are shared between employers and employees up to an agreed employee contribution cap, beyond which all further increases will be the responsibility of employees...The costs will be assessed through the periodic scheme valuations that take place every 3 or 4 years.*<sup>15</sup>

8 IFS Green Budget: February 2012, pg 100 (<http://www.ifs.org.uk/publications/6000>)

9 Cited in IFS Green Budget: February 2012, pg 100 (<http://www.ifs.org.uk/publications/6000>)

10 Dr David Marshall and Dr Jos Ijpelaar – Statistical and Social Inquiry Society of Ireland (SSISI): Seminar on Aging and Implications for Public Services – 13 June 2011

11 NISRA, Demography and methodology

12 NISRA, Mid-year population estimates

13 IPSPC: Interim Report, 10 October 2010, Table 4.A, pg 55

14 House of Commons Library, Public Services Pension Bill, Research Paper 12/57, 16 October 2012

15 HM Treasury, Long-term public finance report: an analysis of fiscal sustainability, December 2009, Box 6.A

The IPSPC noted that the intention behind “cap and share” seemed to be to keep the levels of employer cost below those reached between 2004 and 2005.<sup>16</sup>

It is generally accepted that Labour's reforms would deliver a significant level of savings. A National Audit Office report in 2010 found that the changes to the NHS, teachers and civil service pension schemes meant that:

*Long-term costs are projected to stabilise around their current levels as a proportion of GDP. The changes are also set to manage one of the most significant risks to these costs, by transferring from taxpayers to employees additional costs arising if pensioners live longer than currently projected.*<sup>17</sup>

However, as noted by the IPSPC:

*The savings will build up gradually, in line with the gradual increase in the proportion of members accruing benefits under the new pension terms...it will be some time before the full impact of the reforms appears in employers contribution rates.*<sup>18</sup>

The IPSPC concluded that the savings to be achieved from these reforms had not gone far enough to provide a sustainable solution to the rising cost of pensions:

*Although some existing members of some schemes have had increases in their pension ages, to reflect increasing longevity, most have not. Cap and share cannot take account of the increases in cost of pensions over recent decades because people have been living longer. Also, untested, complex cap and share arrangements cannot of themselves address the underlying issue of structural reforms, nor significantly reduce costs to taxpayers.*<sup>19</sup>

#### 1.4 UK Coalition Government Reforms

In June 2010 the UK Coalition Government announced that the Consumer Price Index (CPI) would replace the Retail Price Index (RPI) as the measurement to determine annual pension uprating.

The rationale behind this decision was that the CPI was used as the main measure of inflation, and has been the basis of the Government's inflation target since December 2003. The key implication of the decision is that the inflation rate measured by CPI is consistently lower than the rate as measured by RPI. The change is expected to result in the use of upratings that are about 0.75 percentage points lower than equivalent RPI figure for that year.<sup>20</sup> The long-term effects of this decision on a national scale are significant:

*If CPI uprating were to be continued through the 21st century, with an average differential from RPI of 0.75 percentage points as forecast, then subject to how cap and share is operated, this change could reduce public service pension expenditure by over 10 per cent by 2030 (£5 billion in 2008-09 prices) and 20% by 2060 (£20 billion in 2008-09 prices).*<sup>21</sup>

In terms of the effect on an individual's actual pension payments, whilst the difference in upratings in a single year may appear small, the cumulative effect is very significant. The Office for Budgetary Responsibility (OBR) assumes the annual increase in RPI of 3.4% and 2.0% in the CPI – a difference of 1.4% percentage. Should this assumption hold, after ten years the value of a payment uprated using CPI would be around 87% of what it would have

16 IPSPC: Interim Report, 7 October 2010, pg 45

17 NAO, The impact of the 2007-08 changes to public sector pensions, HC662, 8 December 2010, Summary

18 Independent Public Service Pensions Commission: Interim Report, 7 October 2010

19 IPSPC: Interim Report, 7 October 2010, 2.25-26

20 IPSPC: Interim Report, 7 October 2010, 2.12

21 IPSPC: Interim Report, 7 October 2010, 2.14

been if uprated by RPI; after twenty years, it would be 75%; and after thirty years it would be around 65%.<sup>22</sup>

Finally, shortly after the publication of the IPSPC Final Report, the Coalition Government announced an increase in member's contribution rates by 3.2% on average by 2014-15. This was expected to deliver additional member contributions of £2.8 billion by 2015. The total increase was to be phased in across three years, with the first 40% of the increase introduced in 2012-13.

## 1.5 Independent Public Service Pensions Commission

Budget 2010 established an Independent Public Service Pension Commission (IPSPC), chaired by Lord Hutton. The terms of reference for this Commission were:

*To conduct a fundamental structural review of public service pension provision and to make recommendations to the Chancellor and Chief Secretary on pension arrangements that are sustainable and affordable in the long term, fair to both the public service workforce and the taxpayer and consistence with the fiscal challenges ahead, while protecting accrued rights.*<sup>23</sup>

The review covered all the major public service pension schemes across the UK, including civil servants, armed forces, NHS, teachers, local government employees, police, firefighters and the judiciary.

The IPSPC published two reports: an Interim Report on 7 October 2010, and the Final Report on 10 March 2011.

### 1.5.1 IPSPC Interim Report

The IPSPC Interim Report seeks to present a balanced view on the public service pension landscape. The Interim Report begins by clearly stating the value of a public service pension scheme, and cautions against a 'race to the bottom' based upon simple comparisons with the private sector pension landscape. In his Foreword, Lord Hutton asserts:

*We should regard public service pensions as part of an effectively designed overall remuneration system ... And whilst it is right that taxpayers finance a proportion of public service pensions, as they are also the recipients of the services that are provided by employees, they are also entitled to expect that their hard earned money is spent wisely and to the best possible effect right across the public sector.*

*First and foremost, pensions are provided in order to ensure an adequate income when someone stops working which can help sustain a reasonable standard of living without becoming a burden on the welfare state. If we lose sight of this when we consider the case for reform and end up pushing more people into a reliance on state benefits in retirement, we may well find that overall costs are likely to rise, whatever changes might be made to the design of public service pensions. Simple, sloganistic approaches are not the answer.*<sup>24</sup>

After setting out this basic position, the Foreword goes on to state:

*It is my clear view that the figures in this report make it plain that the status quo is not tenable. I believe we need to adopt a more prudent approach to meeting the cost of public service pensions in order to strike a fairer balance.*<sup>25</sup>

The Report claims that this more prudent approach is needed, as "the current public service pensions structure was not designed for modern working patterns and has been unable to

22 House of Commons Library, Public Service Pensions Bill, Research Paper 12/57, 16 October 2012, p 12

23 [http://www.hm-treasury.gov.uk/indreview\\_johnhutton\\_pensions\\_tor.htm](http://www.hm-treasury.gov.uk/indreview_johnhutton_pensions_tor.htm)

24 IPSPC: Interim Report, 7 October 2010, pg 3

25 IPSPC: Interim Report, 7 October 2010, pg 4

*respond flexibly to changes in this area and to demographic change*".<sup>26</sup> The consequences of this are:

- Rising benefits due to increasing longevity;
- Unequal treatment of members within the same profession;
- Unfair sharing of costs between the employee, the employer and taxpayers; and,
- Not realising the potential for plurality in the ways public services are provided.<sup>27</sup>

The Interim Report rejected the notion that these structural issues would be best dealt with through a "*funded, individual account, defined contribution model*".<sup>28</sup> This type of suggestion ignored: the major financing burden it would place upon current taxpayers; the ability of Government acting as a large employer to manage risk; and, the increased uncertainty of post-retirement income that would result.

The Report identified a set of principles through which long-term reform options should be measured:<sup>29</sup>

- **Affordability and Sustainability** – This must be considered over the long-term. Any assessment of options must consider the consequences of reforms on take-up of benefits such as pension credit. Sensitivity of future costs to risks, and how these risks are to be managed, must also be considered.
- **Adequacy and Fairness** – Public service pensions must supply an adequate source of post-employment income to former employees. Judging the fairness of this must consider the distribution of contributions between employees, employers and the taxpayer and fairness between different generations of taxpayer.
- **Supporting Productivity** – Public service pensions must be consistent with an efficient labour market. This should support the delivery of public services in a manner that achieves value for money. It is also critical that scheme design does not work as a barrier to employees moving between sectors, and the use of different types of organisation to deliver public services.
- **Transparency and Simplicity** – Schemes need to be easily understood by members who benefit, and by taxpayers who help fund the schemes.

In relation to achieving short-term savings, the IPSPC concluded in its Interim Report that the most effective method would be an increase in member contribution rates, as long as these were managed to protect the lowest paid, and were implemented in a way that would not result in significant drop-outs.<sup>30</sup>

### 1.5.2 IPSPC Final Report

The key recommendations from the Final Report were laid out in the accompanying press release:

*The main recommendation of the report is that existing final salary public service pension schemes should be replaced by new schemes, where an employee's entitlement is still linked to their salary (a "defined benefit scheme") but is related to their career average earnings, with appropriate adjustments in earlier years so that benefits maintain their value.*

26 IPSPC: Interim Report, 7 October 2010, pg 15

27 IPSPC: Interim Report, 7 October 2010, pg 15

28 IPSPC: Interim Report, 7 October 2010, pg 15

29 IPSPC: Interim Report, 7 October 2010, pg 13

30 IPSPC: Interim Report, 7 October 2010,

*The report suggest that it should be possible to introduce these new schemes before the end of this Parliament, in 2015, while allowing a longer transition, where needed, for groups such as the armed forces and police.*

*Other key recommendations in the report include:*

- *Linking Normal Pension Age (NPA) in most public service pension schemes to the State Pension Age (SPA);*
- *Introducing a Normal Pension Age of 60 for those members of the uniformed services – armed forces, police and firefighters – who currently have a NPA less than 60;*
- *Setting a clear cost ceiling for public service pension schemes – the proportion of pensionable pay that taxpayers will contribute to employees’ pensions – with automatic stabilisers to keep future costs under more effective control;*
- *Honouring, in full, the pension promises that have been earned by scheme members (their “accrued rights”) and maintaining the final salary link for past service for current members;*
- *Introducing more independent oversight and much stronger governance of all public service pensions schemes;*
- *Encouraging greater member involvement in consultations about the setting up of new schemes, and in the running of schemes; and,*
- *Overhauling the current legal framework for public service pensions to make it simpler.<sup>31</sup>*

The move to link NPA to SPA was intended to mitigate against the greatest risk to increasing pension costs – the longevity of members. Members would be expected to work to an older age to be entitled for their full pension benefit. The IPSPC recognised, however, that the unique nature of work in the uniformed services would possibly require a different NPA.

The setting of cost ceilings was intended to build upon the development of “cap and share” arrangements by the UK Labour Government:

*These arrangements were agreed between employers and trade unions and the intention was that certain increases in pension costs were shared between employer and employee up to a cap on employer costs. Introducing a cost ceiling would have an automatic default change that will take place if agreement is not reached.<sup>32</sup>*

The IPSPC Final Report argues that the most appropriate way to set a cost ceiling would be to do so as a proportion of pensionable pay.<sup>33</sup>

In terms of the protection of accrued rights, the IPSPC had been asked to ensure that its recommendations protected accrued rights. Its Final Report argued that the boundaries of these accrued rights were unclear. For deferred and retired scheme members, the IPSPC recommended that all rights to future benefits should be recognised as accrued benefits. For currently active scheme members, it was recommended that the UK Government honour pension promises that had been already been accrued by members.

## 1.6 ‘Public Service Pensions: Good Pensions That Last’

Following the publication of the IPSPC Final Report, the UK Government entered into a period of scheme-specific discussions with trade unions. In response to developments, the

31 IPSPC Press Release, 10 March 2011, Lord Hutton publishes his final report on public service pensions ([http://webarchive.nationalarchives.gov.uk/20130129110402/http://www.hm-treasury.gov.uk/indepview\\_johnhutton\\_finalpress.htm](http://webarchive.nationalarchives.gov.uk/20130129110402/http://www.hm-treasury.gov.uk/indepview_johnhutton_finalpress.htm))

32 IPSPC: Final Report, 3 March 2011 pg X

33 House of Commons Library. Standard Note SN05768, 26 October 2012, pg 19



TUC announced its intention to hold a day of strike action on 30 November. On 2 November 2011, Treasury improved its offer to employees, including a more generous accrual rates and permitting transitional relief for staff near their retirement date. This improved offer was contained in Public Service Pensions: Good Pensions That Last. The terms of this offer were:

- A Career Average Revalued Earnings (CARE) pension scheme;
- Public service workers benefits to be earned at a rate of 1/60th of pensionable earnings each year;
- Public service workers will have their benefits increased each year they are working in the public services, in line with earnings revaluation;
- A NPA linked to SPA (or 65, whichever is higher);
- Pensions in payment to increase in line with the CPI;
- Benefits earned by leavers to increase by CPI from the date of leaving until retirement;
- Average member contributions for the unfunded public service pension schemes set at the level of the existing schemes after the increase of 3.2 percentage points currently planned;
- In the funded Local Government Pension Scheme both members contributions and other adjustments to benefits will be reflected in cost ceilings following the outcome of the Department for Communities and Local Government's consultation on alternatives to contribution increases. This means that the cost ceilings presented here are indicative and not final;
- Members given the option at retirement to convert £1 of annual pensions into a £12 lump sum payment, in accordance with HMRC limits and regulations;
- Ill-health, death and survivors benefits (ancillary benefits) to match those currently provided by schemes that are open to new members;
- Members who leave the scheme and re-join within 5 years are to be able to link their new service with previous service, as if they had always been an active member;
- Members transferring between public service schemes to be treated as having continuous active service (which would include those transferring between schemes who had re-joined public service after a gap of less than 5 years); and,
- An employer contribution cap to provide backstop protection to the taxpayer against unforeseen costs and risks.<sup>34</sup>

The offer was made conditional on securing agreement by the end of 2011. On 20 December Treasury announced that agreement had been reached with most unions on the main terms of the new arrangements for the local government, health, civil service and teachers' schemes, meaning the offer made in November had been "secured".<sup>35</sup> More detail on the response of the main UK unions to the reform process can be found within House of Commons Library Research Paper 12/57.<sup>36</sup>

## 2 Public Service Pensions Reform in Northern Ireland

Within the context of those developments outlined in Section 1, the Assembly will consider the Public Service Pensions Bill (the Bill). The following sub-sections provide: a brief outline of the Bill introduced by DFP; and, an overview of key developments involving the Executive and the Assembly.

34 [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/205837/Public\\_Service\\_Pensions\\_-\\_good\\_pensions\\_that\\_last.\\_Command\\_paper.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/205837/Public_Service_Pensions_-_good_pensions_that_last._Command_paper.pdf)

35 House of Commons Library, Public Service Pensions Bill, Research Paper 12/57, 16 October 2012, p 24

36 House of Commons Library, Public Service Pensions Bill, Research Paper 12/57, 16 October 2012, p 25-8

## 2.1 The Bill – as introduced

### Objectives

The main objectives of the Bill – as introduced - are the same as those in the Westminster 2013 Act:

- Enable the creation of new public service schemes based upon CARE;
- Link the NPA to the SPA, except in schemes for uniformed services which would have a NPA of 60, subject to regular review;
- Provide transitional protection for those closest to retirement – people within 10 years of their NPA on 1 April 2012 would remain in existing schemes. The specific details of these arrangements for each scheme would be set out in scheme regulations. (The Bill also makes provision for tapering arrangements for those with 4 years of meeting this clause<sup>37</sup>);
- Introduce an “employer cost cap” – a mechanism to manage changes in scheme costs should they breach a limit;<sup>38</sup>
- Introduce new requirements for management, regulation and administration of schemes;
- Introduce new common procedures for changing scheme rules in future, with enhanced requirements for certain changes made within 25 years of 2015, and for retrospective changes expected to have significant adverse effects for members;
- Extend access to public schemes to allow public service workers whose employment is transferred to new employers to retain membership of public service scheme; and,
- Add the new schemes to the list covered by the *Pensions Increase Act 1971*, so that same arrangements in respect of increasing pensions in the old schemes apply to new schemes (i.e. increases in line with CPI).

### Structure

The Bill - as introduced<sup>39</sup> - is structured in the following way:

- Establishment of new schemes – These clauses contain the main enabling power for the new public service pension schemes. The schemes will be created in regulations, which must be compliant with the terms of the Bill. The Bill enables Departments to make these regulations. (Clauses 1, 2, and 3)
- Governance – The clauses within Governance provide that the new schemes which are set up under the Bill must have a scheme manager, a pension board, and, a scheme advisory board. (Clauses 4, 5, 6, and 7)
- Design – This group of clauses relates to the design of the new pension schemes as DB CARE schemes, the procedure for revaluing earnings, and the utilisation of the SPA as the NPA. (Clauses 8, 9, and 10)
- Cost Control – These clauses deal with scheme valuations, the establishment of employer cost caps, employer contributions in funded schemes, the provision of information to

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37 More information on these arrangements can be found at <http://www.civilservice.gov.uk/pensions/reform/questions-and-answers>

38 The cost cap is “a rate, expressed as a percentage of pensionable earnings of members of the scheme, to be used for the purpose of measuring changes in the cost of the scheme”. The rate is to be set in accordance with directions given by Treasury in GB (Westminster Public Service Pensions Act 2012, (12)), and by DFP in Northern Ireland (Public Service Pensions Bill (Northern Ireland) – (12). Further guidance on cost caps can be found at [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/205839/Establishing\\_an\\_employer\\_cost\\_cap\\_in\\_public\\_service\\_pension\\_schemes.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/205839/Establishing_an_employer_cost_cap_in_public_service_pension_schemes.pdf)

39 <http://www.niassembly.gov.uk/Documents/Legislation/Bills/Executive-Bills/session-2012-2013/Public%20Service%20Pensions%20Bill.pdf>

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scheme members and DFP record keeping and regulatory oversight. (Clauses 11, 12, 13, 14, 15, 16, and 17)

- Transitional – The clauses within this group concern the restriction of benefits provided under existing schemes after those schemes have closed, the closure of existing injury and compensation schemes, and final salary links. (Clauses 18, 19 and 20)
- Procedure for scheme regulations – These clauses deal with arrangements for responsible bodies carrying out consultations prior to changing or making scheme regulations, establishes protected elements for a period of 25 years, provides a procedure for retrospective provisions, and legislative procedures for the making of scheme regulations. (Clauses 21, 22, 23 and 24)
- New Schemes: supplementary – Clauses in this section make provision for non-public sector employees to be members of the newly created public service pension schemes, and for scheme managers and employers to make payments towards the provision of pensions not delivered under new schemes established by the Bill. (Clauses 25, 26, and 27)
- Existing Schemes: supplementary – enables local government pension scheme reform to be brought into force one year earlier than the rest of public service pension schemes. (Clauses 28 and 29)
- Public body pension schemes – This section covers public service schemes outside the main schemes, run for staff of Non-Departmental Public Bodies, Arms-Length bodies and similar bodies. (Clauses 30, 31, and 32)
- General – Covers general definitions, regulations, orders and directives. (Clauses 33 and 34)
- Final – Provides when and how the provisions of the Bill will come into force, and that any expenditure for the provision of pensions to present or former holders of judicial office are to be paid out of money provided by the Assembly (Clauses 35 and 36).

Further detail on the specific clauses and related schedules of the Bill can be found in the Explanatory and Financial Memorandum.<sup>40</sup>

RaISe has reviewed the provisions of the Westminster 2013 Act, and the NI Bill. **The provisions contained in these two pieces of legislation are practically identical, implementing the same package of reforms.**<sup>41</sup>

### Timetabling

In January 2013, a DFP Briefing Paper to the Committee for Finance and Personnel (CFP) confirmed that:

*The projected timescale for Royal Assent being secured for the Bill has been provisionally set for April 2014. This timescale presupposes a date for the Bill's introduction in the Assembly in June 2013.*

*Following enactment, secondary legislation will be required to amend the rules of each devolved public service pension scheme to give effect to the reform measures carried in the Bill. This work will be taken forward by each of the Ministerial Departments which have individual responsibility for pensions schemes. It is estimated that this process may take up to 10 months to complete. Current estimates are that the requisite secondary legislation and revisions to schemes' administrative processes will be in place by February 2015.*

40 [http://www.niassembly.gov.uk/Documents/Legislation/Bills/Executive-Bills/session-2012-2013/Public\\_Service\\_Pension\\_Bill\\_EFM%20-%20As%20Introduced.pdf](http://www.niassembly.gov.uk/Documents/Legislation/Bills/Executive-Bills/session-2012-2013/Public_Service_Pension_Bill_EFM%20-%20As%20Introduced.pdf)

41 The only substantive differences appear to relate to areas where Westminster has legislative authority which Northern Ireland does not have, and so the section is not relevant to the Northern Ireland Bill. For example, the Bill introduced to the Assembly does not replicate sections 33 (Great offices of state), 34 (Parliamentary and other pensions schemes: pension age), 35 (Members of the European Parliament), and, 36 (Defence Fire and Rescue Service and ministry of Defence Police: review).

*...On 3 December 2012 the Chief Secretary to the Treasury confirmed in writing to the Minister that a failure or delay in passing the necessary legislation to implement the pensions reforms in line with the deadlines contained in the Westminster Bill will result in a proportionate reduction in the Northern Ireland block grant.<sup>42</sup>*

## 2.2 Key Developments

Under the current devolution arrangements, the public services pension schemes for which the Assembly has legislative authority are:<sup>43</sup>

| Pension Scheme                                                            | Minister            | Department                                              |
|---------------------------------------------------------------------------|---------------------|---------------------------------------------------------|
| NI Teachers' Pension Scheme                                               | John O Dowd MLA     | Department of Education                                 |
| Local Government Pensions Scheme (NI)                                     | Alex Attwood MLA    | Department of the Environment                           |
| Principal Civil Service Pension Scheme (NI)                               | Sammy Wilson MP MLA | Department of Finance and Personnel                     |
| Health and Social Care Pension Scheme<br>Firefighters Pension Scheme (NI) | Edwin Poots MLA     | Department of Health, Social Services and Public Safety |
| Police Service of Northern Ireland Pension Scheme                         | David Ford          | Department of Justice                                   |

There have already been some moves towards reform in Northern Ireland prior to the IPSPC and Public Service Pensions Bill, such as:

- The Local Government Pension Scheme (Northern Ireland) already operates a pension age of 65 for all staff;
- The Northern Ireland Civil Service introduced a CARE pension scheme with a pension age of 65 for all new entrants from 30 July 2007 (NUVOS);
- The Northern Ireland Teacher's Pension Scheme introduced a pension age of 65 for all new entrants from 1 April 2007; and,
- The Health and Social Care Pension Scheme has a pension age of 65 for all new entrants after 1 April 2008.<sup>44</sup>

However, these reforms have applied only to new entrants since the relevant reform date. Staff employed before these dates have remained within the previous pension arrangements.

On 8 March 2012, the Northern Ireland Executive agreed in principle to reforms of all the schemes for which it was responsible:

- To commit to the policy for a new career average revalued scheme model with pension age linked to State Pension Age to be adopted for general use in the public service schemes; and,
- To adopt this approach consistently for each of the different public sector pension schemes in line with their equivalent scheme in Great Britain and not to adopt different approaches for Northern Ireland.<sup>45</sup>

Responsibility for pensions for the armed forces and senior judiciary is reserved to Westminster, so these schemes are covered by the 2013 Act.<sup>46</sup>

42 DFP Briefing paper to CFP, 4 January 2013

43 [http://www.dfpni.gov.uk/civilservicepensions-ni/policy\\_consultation\\_document-2.pdf](http://www.dfpni.gov.uk/civilservicepensions-ni/policy_consultation_document-2.pdf)

44 NIAR 114-13.

45 DFP communication to Committee for Finance and Personnel, dated 4 January 2013

46 House of Commons Library, Standard Note SN6545, 12 February 2013, pg 11

Later in 2012, in response to the Westminster Public Service Pensions Bill, the Minister for Finance and Personnel intended to introduce a Legislative Consent Motion so that the terms of the Westminster Bill would pertain to the schemes for which NI had legislative authority. The justification for this was that:

*Although public service pension arrangements for Northern Ireland is a transferred matter a long standing convention of parity exists between Northern Ireland and Great Britain in this area, and accordingly the normal approach for Northern Ireland schemes is to implement changes in pension policy as a consequence of policy decisions taken at United Kingdom Government level, and in line with change made to the equivalent schemes in Great Britain rather than to develop or formulate policy directly...An Assembly Bill to give effect to the Coalition Government's pension reforms in the Northern Ireland public service schemes would contain virtually identical provisions to those carried in the Westminster Bill.<sup>47</sup>*

In a statement to the Assembly on 26 November 2012, the Minister for Finance and Personnel confirmed that the Executive had not agreed to his proposal to pass a Legislative Consent Motion (LCM). The Minister claimed that this could pose a significant threat to the ability of the Assembly to have all primary and secondary legislation in place by April 2015. DFP had commissioned an estimate of the savings foregone should the reforms not be implemented for the Health and Social Care Scheme by the Government Actuarial Department (GAD). This analysis estimated the annual cost of savings foregone would be £100m – around 7% of the pensionable pay bill. When DFP extrapolated this 7% across the other public service pension schemes affected, the total cost of savings foregone was estimated by DFP to be £262m.<sup>48</sup>

Further to CFP requests for estimates specific to each NI public service pension scheme in May 2013, DFP commissioned further GAD analysis, expected to be available to CFP on 21 June 2013. In specific terms:

*...the Department has now commissioned the Government Actuary's Department (GAD) to provide scheme-specific calculations for the four other unfunded pension schemes – teachers, police, fire fighters and civil servants...it should be noted, however, that those estimated costs are based on schemes agreeing to adopt scheme designs that are equivalent to GB schemes. If schemes here choose a different scheme design, the fee for doing more detailed work could exceed £100,000.<sup>49</sup>*

DFP launched a Policy Consultation document on the reform of Principal Civil Service Pension Scheme (Northern Ireland) on 22 January 2013 - Northern Ireland Public Service Pensions Reform - Consultation on proposals to Reform Public Service Pensions<sup>50</sup>. The closing date for responses was 15 April 2013. The consultation received 52 responses in total – 36 individual scheme members, 7 organisational bodies, 8 trade unions and 1 collective trade union.<sup>51</sup>

RaISe reviewed DFP's written briefing to CFP dated 9 May 2013, which details key points raised during the consultation exercise, and the Department's related responses. Where appropriate, this information is highlighted in section 4 of this Bill Paper, which outlines

47 DFP Letter to CFP dated 25 September 2012

48 Statement to the Assembly by Sammy Wilson MP MLA, Minister for Finance and Personnel, 26 November 2012

49 [http://www.niassembly.gov.uk/Documents/Official-Reports/Finance\\_Personnel/2012-2013/130512\\_PublicServicePensionsBill\\_WayForward.pdf](http://www.niassembly.gov.uk/Documents/Official-Reports/Finance_Personnel/2012-2013/130512_PublicServicePensionsBill_WayForward.pdf)

50 [http://www.dfpni.gov.uk/civilservicepensions-ni/policy\\_consultation\\_document-2.pdf](http://www.dfpni.gov.uk/civilservicepensions-ni/policy_consultation_document-2.pdf)

51 Northern Ireland Public Service Pension Reform, Consultation on proposals to Reform Public Service Pensions from April 2013, 20 May 2013  
([http://www.dfpni.gov.uk/civilservicepensions-ni/index/latest-news/public\\_service\\_pensions\\_bill.htm](http://www.dfpni.gov.uk/civilservicepensions-ni/index/latest-news/public_service_pensions_bill.htm))

key issues about the Bill (as introduced). The key issues which raised comment during the consultation exercise were:

- The change in the pension age and its implications for a number of physically demanding roles;
- Transitional arrangements;
- Revised scheme governance measures;
- The use of CARE;
- Managing the cost of public service pensions;
- The Westminster Bill;
- Cost-ceilings;
- The decision to screen out a full EQIA; and,
- Implementation factors.

In January 2013, DFP provided a paper to the CFP, wherein it explored areas in which there possibly was scope for NI to deviate from the approach adopted at Westminster. The DFP paper notes that HMT funding projections are formulated on the basis that the policy intentions of the Westminster Public Service Pensions Bill would be applied in NI, and that the recent approach to devolved pension schemes has been to apply changes in line with policy developed centrally.

The Westminster *Public Service Pensions Act 2013* provides a framework for the entire public service pension landscape. It is primary legislation, and is high-level in nature. As such, and given the constraints of potential financial consequences and the Executive's previous agreement on public service pension reform on 8 March 2012, there is limited scope for deviating from the terms of the 2013 Act in the NI Bill.

It is in the implementation of secondary legislation, led by each of the relevant Ministerial Departments, which will provide potential opportunities for local variation. In doing so Ministers will be:

*...likely to give consideration to the approach taken to date in mirroring their comparable scheme in Great Britain when designing their Northern Ireland scheme and its regulations.*

*...Ministers will need to take account of keeping within the parameters of cost, the overall core provisions set out in primary legislation and the costs of changing their IT systems.<sup>52</sup>*

Some of the areas where there may be scope for variation in secondary legislation are:

- Scheme accrual rates;
- Annual revaluation of pension benefits whilst in service (**not** the uprating of pensions which are deferred are in payment);
- Employee contribution rates;
- Lump sum payments;
- Ancillary benefits; and,
- Arrangements for members who leave and re-join a scheme.<sup>53</sup>

DFP reiterate that whilst there will be scope for variation in the areas listed above, the key constraint to such variations will be the financial costs.

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52 DFP Briefing Paper to CFP, 25 January 2013

53 DFP Briefing Paper to CFP, 25 January 2013

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The current rates for the main public service pension schemes in NI are outlined below:<sup>54</sup>

| <b>Scheme</b>    | <b>Annual accrual rate</b> | <b>Annual rate for revaluation of accrued benefits (active members)</b> | <b>Average employee contribution rate in CARE schemes at April 2015</b> |
|------------------|----------------------------|-------------------------------------------------------------------------|-------------------------------------------------------------------------|
| Civil Service    | 1/43.1                     | CPI                                                                     | 5.6%                                                                    |
| NHS              | 1/54                       | CPI + 1.5%                                                              | 9.8%                                                                    |
| Teachers         | 1/57                       | CPI + 1.6%                                                              | 9.6%                                                                    |
| Local Government | 1/49                       | CPI                                                                     | 6.5%*                                                                   |

\*Average employee contribution for members at April 2015 for Local Government scheme in NI was not included in the DFP figures. The figure included in the table was calculated by using the banded contribution rates for 2013/14, and calculating an average contribution rate.<sup>55</sup>

### 3 A Comparative Perspective

The following sub-sections set out key legislative developments in GB in relation to public service pension reform. The information is intended to provide a comparative perspective, further informing Members' consideration of the recently introduced Bill in NI.

#### 3.1 Westminster Public Service Pensions Act – Legislative Process

The Westminster Public Service Pensions Bill (the Westminster Bill) was published on 13 September 2012. This was intended to be the primary legislation, which was required to “create the framework necessary to enable changes to public service pensions”.<sup>56</sup> The Bill received Royal Assent on 25 April 2013,<sup>57</sup> enacted as the *Public Service Pensions Act 2013* (the 2013 Act).

The 2013 Act applies on a UK-wide basis, with Devolved Administrations in the UK retaining their ability to make regulations, within its legislative framework. It draws upon the recommendations of the IPSPC, and “Public Service Pensions: Good Pensions That Last”. The main elements are to:

- Enable the creation of new public service schemes based upon CARE;
- Link the NPA to the SPA, except in schemes for uniformed services which would have a NPA of 60, subject to regular review;
- Provide transitional protection for those closest to retirement – people within 10 years of their NPA on 1 April 2012 would remain in existing schemes. The specific details of these arrangements for each scheme would be set out in scheme regulations;
- Introduce an “employer cost cap” – a mechanism to manage changes in scheme costs should they breach a limit;<sup>58</sup>

54 DFP Briefing paper to CFP, 25 January 2013

55 [http://www.nilgosc.org.uk/Circulars%202013/Circ%202/Circular02\\_2013.pdf](http://www.nilgosc.org.uk/Circulars%202013/Circ%202/Circular02_2013.pdf)

56 HM Treasury press Release, 9 May 2012, Public Service Pension Bill

57 <http://services.parliament.uk/bills/2012-13/publicservicepensions.html>

58 The cost cap is “a rate, expressed as a percentage of pensionable earnings of members of the scheme, to be used for the purpose of measuring changes in the cost of the scheme”. The rate is to be set in accordance with directions given by Treasury in GB (Westminster Public Service Pensions Act 2012, (12)), and by DFP in Northern Ireland (Public Service Pensions Bill (Northern Ireland) – (12)). Further guidance on cost caps can be found at [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/205839/Establishing\\_an\\_employer\\_cost\\_cap\\_in\\_public\\_service\\_pension\\_schemes.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/205839/Establishing_an_employer_cost_cap_in_public_service_pension_schemes.pdf)

- Introduce new requirements for management, regulation and administration of schemes;
- Introduce new common procedures for changing scheme rules in future, with enhanced requirements for certain changes made within 25 years of 2015, and for retrospective changes expected to have significant adverse effects for members;
- Extend access to public schemes to allow public service workers whose employment is transferred to new employers to retain membership of public service scheme;
- Add the new schemes to the list covered by the *Pensions Increase Act 1971*, so that same arrangements in respect of increasing pensions in the old schemes apply to new schemes (i.e. increases in line with CPI); and,
- End existing pension arrangements for future holders of Great Officers of State.<sup>59</sup>

From the research undertaken to date by RalSe, it appears that a full macro-economic analysis of the consequences of the recommended reforms is unavailable. No such detailed analysis was included in the IPSPC Reports. The IPSPC recommendations were framed with the intention of ensuring that public service pensions did not act as a barrier to labour market mobility. However, there is no measure or analysis of this potential consequence.

The following link provides detail on the *2013 Bill's* passage through Westminster, with links to relevant papers:

<http://services.parliament.uk/bills/2012-13/publicservicepensions/stages.html>

The sub-section below highlights key developments during committee stages in the House of Commons and House of Lords, which may aide Members' understanding of debate surrounding the NI Bill provisions.

### 3.1.1 House of Commons Committee Stage

House of Commons Library Research paper 12/72 "Public Service Pensions Bill: Committee Stage Report", provides a guide to the main issues debated in the Committee stage of the Bill. The paper notes:

*The Government made a number of amendments to the Bill. Most were either "minor and technical", or clarified how provisions were intended to work.*

*No opposition amendments were accepted. The provisions that were subject to the most debate in Committee included: increases in the normal pension age; whether there was sufficient protection for members against changes to their benefits in future; protection for accrued rights; governance arrangements and the application of various provisions to the Local Government Pensions Scheme.<sup>60</sup>*

In his presentation to the Public Bill Committee, Lord Hutton stated that the Bill was:

*An important step in the right direction...My main concerns at present are centred on the provisions dealing with scheme closures and how this might affect the Local Government Pension Scheme and the proper protection of accrued rights. There is still no definition of these in the Bill. I also feel there is a strong case to improve specific provisions in the Bill dealing with the membership of the new pension boards so that employee representatives sit as of right, on all these new bodies.*

Closure of existing schemes is covered in section 18 of the 2013 Act. This section states that benefits may not be provided under existing pension schemes for service provided after the closing date of the scheme, except where transitional arrangements were in place. The closing date would be 5 April 2015 for all schemes, except for local Government Pension

59 House of Commons Library, Research Paper 12/72, Public Service Pensions Bill, 29 November 2012, pg 5

60 House of Commons Library, Research Paper 12/72, Public Service Pensions Bill, 29 November 2012, pg 2



Schemes in England, Wales and NI, which will close on 1 April 2014. Lord Hutton's concerns centred on the possibility that closing Local Government Schemes on a specific date may trigger a "section 75 debt" in local government schemes which are currently in deficit. This would result in local authorities becoming liable for scheme debts. The UK Government gave assurance that such concerns were misplaced, as the Westminster Bill made no provision for local authority pension funds to be closed, just that the schemes would be closed.

In relation to definitions of accrued rights, the Minister acknowledged the difficulties with creating a definition, whilst at the same time assuring Committee Members of the Government's commitment to the general principle:

*It has proved difficult to try and define accrued rights. There are already differences in the old individual schemes and occupations; there will no doubt be differences in new schemes...One concern I have is that, if we try to define accrued rights in the Bill, there is a risk of coming up with a definition that acts as a minimum. Without intending to do so, one might end up taking out some accrued rights from one particular scheme because a minimum definition had been provided...It is not our intention to play with accrued rights. Everyone accepts the general principle that those rights must be protected where it is clearly defined that they have protection.<sup>61</sup>*

### 3.1.2 House of Lords' Stages

House of Commons Library Standard Note 6572 "Public Service Pensions Bill – Lords' Stages", provides a guide to the Bill's passage through the House of Lords. In summary:

*All the amendments made to the Bill in the house of Lords were in the name of the Government Minister, except for two related to the pension age for the members of the Defence Fire and Rescue Service and Ministry of Defence (MoD) Police, which were opposed by the Government. The House of Commons voted to reject these amendments on 22 April 2013. However, the Government subsequently accepted an opposition amendment to require a review of the effect of the Bill on the MoD fire and police services, with particular regard to the impacts on the health and well-being of the individuals affected.<sup>62</sup>*

## 3.2 Devolved Administrations

The IPSPC Final report recognised that a number of public service pensions schemes were the responsibility of Devolved Administrations, and not Westminster. The levels of responsibility for public service pension policy vary across UK.

Despite this scope for variance - pre-the 2013 Act - existing schemes across the UK have been the same, as the Devolved Administrations have followed the long-standing parity convention.<sup>63</sup> Treasury echoed this when it advised the Finance Minister that failure to reform in line with GB would result in commensurate reduction of Block Grant.<sup>64</sup> This supports the IPSPC recommendation that its proposed new schemes should be "part of a UK-wide policy framework that extends to Scotland, Wales and Northern Ireland, with limited adaption of other features to meet local circumstances".<sup>65</sup>

61 House of Commons Library, Research paper 12/72, Public Service Pensions Bill: Committee Stage Report, 29 November 2012, pg 19

62 House of Commons Library, Standard note SN6572, Public Service Pensions Bill – Lords' stages, 29 April 2013

63 RalSe, "The Issue of Parity When Legislating in the Northern Ireland Assembly: Key Determinative Factors". This paper is included within the materials provided at the "Assembly Scrutiny of Public Finance Workshops"; which were compiled and developed by RalSe in 2013 as part of the Politics Plus Programme for the Northern Ireland Assembly Legislative Strengthening Trust.

64 Northern Ireland Public Service Pension Reform, Consultation on proposals to Reform Public Service Pensions from April 2015, 20 May 2013 ([http://www.dfpni.gov.uk/civilservicepensions-ni/index/latest-news/public\\_service\\_pensions\\_bill.htm](http://www.dfpni.gov.uk/civilservicepensions-ni/index/latest-news/public_service_pensions_bill.htm))

65 IPSPC: Final Report, 3 March 2011, pg X

Concerns were raised during the passage of the 2013 Act through the House of Commons about the effect of the legislation on Westminster's relationship with the Devolved Administrations. The Government responded:

*Clause 3 provides more detail about how the power to make scheme regulations can be used. It gives the responsible authority discretion to use regulations as it considers appropriate, within the limits set out in the rest of the Bill...*

*The clause contains the consent requirements for scheme regulations, which mark a slight extension to the current situation to require Treasury consent for all non-devolved schemes. The clause maintains the current and long-standing consent arrangements with devolved Administrations. Those consent requirements for scheme regulations allow the Treasury and the Executive in Northern Ireland to perform a central scrutiny role across public service schemes. It is right that the Treasury has a role given that it has complete responsibility for public spending and the oversight of public pension policy.<sup>66</sup>*

The following sub-sections outline key considerations arising in Scotland and Wales about the Westminster 2013 Act.

### 3.2.1 Scottish Parliament

For Scotland, public service pension policy for the vast majority of schemes is reserved to Westminster, except responsibility for the pensions to some Scottish Non-Departmental Public Bodies (NDPBs).<sup>67</sup> A report published by Audit Scotland explained that:

*The UK government is primarily responsible for setting policy for public sector pensions. Within this, responsibility for some policy aspects of five of the six main schemes in Scotland (all but the civil service), including aspects of scheme design, lies with Scottish ministers, or with Scottish ministers and HM Treasury ministers jointly.<sup>68</sup>*

Whilst critical of the nature of reform proposed by the UK Coalition Government, the Scottish Government recognised its sub-ordination to Westminster in this area:

*As all the main pension schemes – those for local government, national health service workers, teachers, police officers, firefighters' and civil servants – are only executively devolved to Scottish ministers or are entirely reserved, Westminster continues to set the main terms for these schemes.<sup>69</sup>*

During the Westminster legislative process, there were considerations given to how the small number of schemes for which the Scottish Parliament had legislative authority. If had been proposed that the Scottish Parliament should pass an LCM to allow the terms of the Westminster 2013 Act to apply to those schemes under Scottish control. However, the Scottish Government rejected this:

*Given this government's opposition to the way in which the UK Government is conducting long term pension reform, the lack of flexibility and the lack of certainty being offered we can not willingly agree to the suggested approach.*

*Where we can act differently we will take the opportunity to do so. There are six small schemes that are affected. We will assess their financial health and if change is necessary then it will be done by this Parliament in line with our values and alongside employees.*

66 House of Commons Library, Research paper 12/72 Public Service Pensions Bill: Committee Stage Report, 29 November 2012, pg 11

67 Scotland Act, Schedule 5

68 Audit Scotland – The cost of public service pensions in Scotland (February 2011), p18

69 Scottish Parliament, Official Report, Finance Committee, 9 January 2013, c2029

*I have today written to Chief Secretary to the Treasury Danny Alexander to confirm that we will not support the transfer of any public sector pensions to UK control.<sup>70</sup>*

Consequently, the Westminster Bill was amended to remove provisions pertaining to schemes under Scottish control. Despite this amendment, the Bill would still cover the vast majority of public service workers in Scotland and Wales.<sup>71</sup> This situation was explained during debate in the House of Lords:

*The Bill will still make provision for Scottish schemes for which Scottish Ministers have executive, but not legislative, competence. These are schemes relating to teachers, health service workers, firefighters, police and local government workers in Scotland.*

*[...]In respect of public sector pensions in Scotland and Wales, the areas for which the Scots and Welsh have complete devolved authority are very small. In Scotland, we are talking about part of the judiciary ... and certain public bodies. For the generality of public servants in Scotland, 98% to 99% of them will be covered by the Bill. [...]Equally in Wales, the number of people for whom the Welsh Assembly has total authority is very small. [...] Again, the vast bulk of public servants in Wales will be covered by the Bill even as amended.<sup>72</sup>*

### 3.2.2 Welsh Assembly

The National Assembly for Wales has legislative competence in relation to pension schemes for Assembly Members, Welsh Ministers and members of local authorities only.<sup>73</sup> Legislative competence for the other public service pension schemes in Wales remains in Westminster, although the Welsh Assembly has power to make regulations for firefighters' pensions.

Therefore, as noted in the quotation the House of Lords in the sub-section above on Scotland, the Westminster 2013 Act covers the vast bulk of public service pensions in Wales. The Welsh Assembly passed an LCM in relation to those schemes for which it had legislative competence on 29 January 2013.<sup>74</sup> This meant that those schemes under Welsh control would be covered by the provisions of the Westminster 2013 Act.

## 4 Issues for Consideration

Outlined below are key issues and related detail that should inform Members' consideration of the Bill, as introduced.

### 4.1 No Legislative Consent Motion

As noted above, an LCM was the Minister for Finance and Personnel's preferred method for enacting reforms in this area. However, the Executive did not agree to this approach.<sup>75</sup> Members may be interested in considering what extra costs have been incurred by deciding not to use an LCM, and what benefit will be derived from this Assembly process, instead of Westminster's? For example, will the interests of NI be better served by DFP's introduction of a Bill, which largely mirrors the Westminster 2013 Act? DFP argues that its approach is largely based on the financial considerations, and that the lack of agreement at the Executive for an LCM will result in inefficient use of resources and Assembly time?

70 <http://www.scotland.gov.uk/News/Releases/2012/11/pension-reform-28112012>

71 House of Commons Library, Standard Note SN 6545, Public Service Pensions Bill 2012/13: devolved administrations, 12 February 2013

72 HL Deb, 9 January 2013, c 173 and 177

73 House of Commons Library, Standard Note SN6545, Public Service Pensions Bill 2012/13: devolved administrations, 12 February 2013

74 [http://www.assemblywales.org/bus-home/research/bus-assembly-publications-monitoring-services/bus-lcm\\_monitor/bus-lcm\\_monitor-2012.htm](http://www.assemblywales.org/bus-home/research/bus-assembly-publications-monitoring-services/bus-lcm_monitor/bus-lcm_monitor-2012.htm)

75 Statement to the Assembly by Sammy Wilson MP MLA, Minister for Finance and Personnel, 26 November 2012

Contrary to this position, there have been arguments that NI has not sufficiently explored the possibility of departing from all the provisions of the Westminster 2013 Act. In their consultation response to DFP, the Northern Ireland Committee of the Irish Congress of Trade Unions (NIC-ICTU) argued:

*TUS does not accept that it is the role of the NI Executive and in particular the NI Assembly to just replicate in full the Westminster Bill. Public Service pensions are a devolved matter and there is a need to give full and proper assessment to the issues raised in this response and by the NIC ICTU Trade Union Side both in its engagement with the Assembly DFP Committee and in the meetings with DFP/Sponsoring Departments' Officials.<sup>76</sup>*

The Department's response recognised that whilst public service pension policy is devolved to the Assembly, there is a general convention in this area that policy broadly mirrors that adopted in GB. DFP argue:

*The proposal for pension reform maintains an established approach and is in line with Executive decisions taken for policy, including the decision taken on 8 March 2012 that policy for pension reform should be implemented in devolved schemes consistently and in line with the changes for the equivalent schemes in Great Britain.<sup>77</sup>*

However, it may be noted that the Executive agreement referred to by DFP was reported in writing to CFP on 4 January 2013 as encompassing two points:

- To commit to the policy for a new career average revalued scheme model with pension age linked to State Pension Age to be adopted for general use in the public service schemes; and
- To adopt this approach consistently for each of the different public sector pension schemes in line with their equivalent scheme in Great Britain and not to adopt different approaches for Northern Ireland.<sup>78</sup>

This appears to indicate that the Executive has agreed only to commit to CARE pension schemes linked to the SPA; and that this approach will be adopted in line with appropriate schemes in GB.

However, the agreement does not seem to cover some of the other elements of the Bill (as introduced), such as: transitional measures for members nearing retirement; introduction of cost ceilings; and, new administrative arrangements for schemes. It is therefore unclear from the facts currently available as to exactly what the Executive position was on those matters.

#### **4.2 The estimated cost of failure to implement reforms in time**

Part of the Minister for Finance and Personnel's rationale for hoping to use an LCM was the risk of failing to have all legislation completed in time (that is in accordance with the Westminster 2013 Act): if this occurred, the Block Grant would be adversely impacted. As noted above, DFP estimate the annual cost of not implementing the reforms at £262 million per year.

This figure was based upon analysis carried out by the Government Actuary's Department (GAD) on the Health and Social Care Pension Scheme. The calculated cost for the Health and Social Care scheme was then extrapolated across the other schemes. Unions have been highly critical of this methodology and the estimate's accuracy:

76 Northern Ireland Public Service Pension Reform, Consultation on proposals to Reform Public Service Pensions from April 2015, 20 May 2013 ([http://www.dfpni.gov.uk/civilservicepensions-ni/index/latest-news/public\\_service\\_pensions\\_bill.htm](http://www.dfpni.gov.uk/civilservicepensions-ni/index/latest-news/public_service_pensions_bill.htm))

77 Northern Ireland Public Service Pension Reform, Consultation on proposals to Reform Public Service Pensions from April 2015, 20 May 2013 ([http://www.dfpni.gov.uk/civilservicepensions-ni/index/latest-news/public\\_service\\_pensions\\_bill.htm](http://www.dfpni.gov.uk/civilservicepensions-ni/index/latest-news/public_service_pensions_bill.htm))

78 DFP communication to Committee for Finance and Personnel, dated 4 January 2013

*There is no proper basis or assessment of how the Finance Minister arrived at the quoted £262m figure...the work done by GAD was predicated on the NI HSC Scheme extrapolated across the rest of the NI Public Service Schemes on a 7% figure. The HSC costing is disputed as it applied a baseline cost of 26% vis-a-vis the published cost figure of 21%. No account was taken of scheme variables across the other schemes such as membership uptake pension values, age profile, the impact of auto-enrolment to list just a few.<sup>79</sup>*

DFP's response to the Unions reiterated that the Minister has already:

*Made clear that in the absence of actual figures provided from HM Treasury, these estimates are intended to give an illustration of the scale of the financial penalty which would be imposed as a consequence of a delay or failure to introduce the required reforms.<sup>80</sup>*

In response to a request from CFP in May 2013 the Department commissioned GAD to provide scheme specific estimations for each of the other public service pension schemes. The results of this work are still outstanding.<sup>81</sup>

#### 4.3 Cash Flow to undermine sustainability of current reform package?

The UK Coalition Government explains that the Westminster 2013 Act is intended to deliver a long-term sustainable model for public service pensions.

However, there have been criticisms about the length of time it will take for the full extent of the foreseen savings to be realised. It is argued this may undermine the current reform package before it has matured.

At present there is a growing annual cash deficit between benefits in payment and contributions paid by members. In 2005/06 the difference was around £200m for the United Kingdom – by 2010/11 the difference had grown to £5.6bn, and is expected to reach £15.4bn by 2016-17.<sup>82</sup> It is argued that the scale of this shortfall, particularly within a period of austerity in public expenditure, will result in irresistible pressure for further reform, with more immediate savings needing to be delivered.

The IPSPC pre-empted this criticism in their Final Report:

*The widely used net cash expenditure figure (the gap between current contributions received and current benefit payments) is not an appropriate measure. As well as being inherently volatile, it is a mismatch between contributions made in respect of future benefits and payments of previously accrued benefits, and so provides no insight into long-term affordability.<sup>83</sup>*

The key point here is to recognise the current reform proposals (as reflected in the recently introduced NI Bill) are aimed at a long-term rebalancing of the cost of public service pensions, and are not designed to totally achieve this in the short-term.

#### 4.4 Sustainability of reforms rests upon a number of assumptions

Prior to the reforms implemented by the UK Coalition Government, the net cost of public service pensions (i.e. the cost of paying benefits less payments received from employees) would have risen to around 2.0% of GDP until the late 2020s, and then fell steadily to around

79 Northern Ireland Public Service Pension Reform, Consultation on proposals to Reform Public Service Pensions from April 2015, 20 May 2013 ([http://www.dfpni.gov.uk/civilservicepensions-ni/index/latest-news/public\\_service\\_pensions\\_bill.htm](http://www.dfpni.gov.uk/civilservicepensions-ni/index/latest-news/public_service_pensions_bill.htm))

80 Northern Ireland Public Service Pension Reform, Consultation on proposals to Reform Public Service Pensions from April 2015, 20 May 2013 ([http://www.dfpni.gov.uk/civilservicepensions-ni/index/latest-news/public\\_service\\_pensions\\_bill.htm](http://www.dfpni.gov.uk/civilservicepensions-ni/index/latest-news/public_service_pensions_bill.htm))

81 On 19 June 2013, DFP indicated to CFP staff that additional analysis would be available shortly, possibly 28 June 2013.

82 The Approaching Cash Flow Crunch, Centre for Policy Studies, Michael Johnson, 5 November 2012

83 IPSPC Final Report, 10 March 2011

1.5% of GDP by 2055. The move to up-rating by CPI rather than RPI should save another 0.4% of GDP by 2061/62; and in the increase in members contributions will save another 0.1% of GDP by 2061/62. Finally, the current reform proposals are predicted to result in a further saving of 0.1% of GDP by 2061/62. The consequence of all this is that by 2061/62 the net cost of public service pensions should fall to around 0.9% of GDP.<sup>84</sup> The gross cost (i.e. the figure before netting off member contributions) is estimated to be around 1.3%.<sup>85</sup>

However, these calculations rest upon a number of assumptions – for example, the Office of Budgetary Responsibility (OBR) assume GDP growth of 2.2% per year.<sup>86</sup> Should this assumption not hold true, then the cost of public service pensions as a proportion of GDP would be higher.

Lord Hutton himself has suggested that this forecast might no longer be accurate as a result of the worsening outlook for the UK economy.<sup>87</sup> However, the Institute of Fiscal Studies (IFS) Green Budget has argued:

*It is true that national income is now expected to be lower going forwards, thereby increasing projected spending as a share of national income via the reduced denominator. However, it is also the case that projected spending in cash terms (the numerator) is also likely to be reduced as a result of two policies announced by the Chancellor, George Osborne, in his Autumn Statement: first, the additional squeeze on public sector pay in 2013–14 and 2014–15 (since lower pay will automatically lead to lower defined benefit pensions); and second, the additional reduction in the size of the public sector workforce that will likely arise as a result of the additional spending cuts planned for 2015–16 and 2016–17. Given the scale of these two policies, it seems unlikely that future spending on public service pensions as a share of national income would actually now be higher than it was forecast to be prior to the Autumn Statement.<sup>88</sup>*

Another area of uncertainty is the impact that the reforms may have upon the numbers of staff who elect to opt-out of a pension scheme with the public service employer. At present, it is estimated that around 15% of public service employees opt-out of their public service pensions, with variation in the actual rate between the various schemes.<sup>89</sup> Should the reforms prompt a change in this opt-out rate:

*A higher opt-out rate would increase net government expenditure on public service pension schemes in the short-term as the Government must pay existing pensions while collecting a lower amount of contributions. However, in the long-term, a higher opt-out rate reduces net government expenditure on public service pensions as fewer pensions must be paid. A lower opt-out rate would have the exact opposite effect.<sup>90</sup>*

In summary, should the assumptions underpinning much of the economic analysis underlying the public service pension reform proposals not hold, the Government may be forced to revisit this area in the near future. The IFS note:

*The Chief Secretary to the Treasury, Danny Alexander, has stated that one of the government's objectives is 'to put in place schemes that can be sustained for decades to come'. But similar claims were made by the then Trade and Industry Secretary, Alan*

84 OBR Fiscal Sustainability Report, July 2012, Chart A.5

85 OBR Fiscal Sustainability Report, July 2012, 3.47

86 OBR Fiscal Sustainability Report, July 2012, pg 7

87 See Lord Hutton's interview on 'The World This Weekend', BBC Radio 4, 4 December 2011 (reported at <http://www.bbc.co.uk/news/uk-politics-16022001> and <http://www.bbc.co.uk/news/uk-16021345>).

88 IFS Green Budget 2012 (<http://www.ifs.org.uk/budgets/gb2012/12chap5.pdf>)

89 PPI, A Pensions Policy Institute Briefing Paper on the impact of the Coalition Government's public service pension reforms, pg 14

90 PPI, A Pensions Policy Institute Briefing Paper on the impact of the Coalition Government's public service pension reforms, pg 14

*Johnson, when implementing the last reforms, so it remains to be seen whether we really have reached the end of the line on public service pension reform.<sup>91</sup>*

Should this be the case, NI would have to revisit the issue also.

#### 4.5 Equality Considerations of Public Service Pension Reform

DFP's equality screening exercise resulted in the decision to screen out the policy for a full Equality Impact Assessment (EQIA).<sup>92</sup> Equality dimensions were explained by the Department as follows:

*With regard to age, it was determined that that was mitigated through the transitional protection measures that are included in the Bill. Also, the policy reflects the Government's approach of removing default pension ages to address trends in longer life expectancy and historical inequalities. Newer, younger staff have higher pension ages than the older staff because of the reform of schemes in the past. In relation to the gender issue, there is the issue of longer life expectancy of women. That is partially mitigated by trends of longer life expectancy in general, but, importantly, although women are expected to live longer, in the public service, men typically earn more. In introducing the career average schemes, higher earners will continue to receive higher pensions, but with a fairer, more proportionate method of calculation.<sup>93</sup>*

This approach was challenged in broad terms by trades union responses to DFP's consultation on the Bill, which called for a full EQIA and consideration of equality impacts in more detail<sup>94</sup> - for example, on women with caring responsibilities,<sup>95</sup> - or particular areas of employment (such as firefighters), who are less likely to maintain a level of operational fitness to age 60.<sup>96</sup>

In the absence of a detailed EQIA for the NI process, this section briefly considers some of the issues raised in the equivalent process in GB, which may provide indicators for potential issues in NI. **However, a direct read-across should not be assumed.** The NI Civil Service differs in some respects to its GB counterpart: 49.8% female compared with 53%; 0.2% minority ethnic compared with 9%; 5.3% with a declared disability compared with 8%; and, the age profile is broadly younger in NI than in GB.<sup>97</sup>

Additionally, equality impacts in GB and in NI have been considered in relation to the civil service as a whole, rather than using data relating specifically to pension scheme membership. A further dimension to be considered is that there is no detailed study of

91 IFS Green Budget 2012 (<http://www.ifs.org.uk/budgets/gb2012/12chap5.pdf>)

92 Department of Finance and Personnel (2013), Screening Flowchart and Template for the Public Service Pensions Bill: <http://www.dfpni.gov.uk/public-service-pensions-bill-equality-screening-document.pdf>.

93 Department of Finance and Personnel evidence to the Committee for Finance and Personnel 24 April 2013: <http://www.niassembly.gov.uk/Assembly-Business/Official-Report/Committee-Minutes-of-Evidence/Session-2012-2013/April-2013/Public-Sector-Pensions-Bill-Consultation-Responses/>.

94 For example, Northern Ireland Public Services Alliance (2013), Northern Ireland Public Service Pensions Reform: Response of the Northern Ireland Public Services Alliance, April 2013, p.12: <http://www.nipsa.org.uk/NIPSA/media/NIPSA/PDFs/Campaigns/Pensions/Consultation-on-Proposals-to-Reform-Public-Service-Pensions.pdf>.

95 Irish National Teachers Organisation (2013), Northern Ireland Public Service Pensions Reform: Response of the Irish National Teachers Organisation, p.3: [http://www.into.ie/NI/Teachers/IssuesforTeachers/ResponsetoProposedReformstoPublicServicePensionsApril2013/INTOResponse\\_ProposedReformsToPublicServicePensions\\_April2013.pdf](http://www.into.ie/NI/Teachers/IssuesforTeachers/ResponsetoProposedReformstoPublicServicePensionsApril2013/INTOResponse_ProposedReformsToPublicServicePensions_April2013.pdf).

96 Irish Congress of Trade Unions Northern Ireland Committee (2013) Northern Ireland Public Pensions Reform Response of the Trade Union Side, April 2013, p.8: [http://www.niassembly.gov.uk/Documents/Finance/Inquiries/Public%20Service%20Pensions%20Bill/TUS%20Response%20to%20Public%20Service%20Pension%20Reform%20\(April%202013\).pdf](http://www.niassembly.gov.uk/Documents/Finance/Inquiries/Public%20Service%20Pensions%20Bill/TUS%20Response%20to%20Public%20Service%20Pension%20Reform%20(April%202013).pdf).

97 All figures from Department of Finance and Personnel (2012), Equality Statistics for the Northern Ireland Civil Service, Belfast: DFP pp.4-6: <http://www.nisra.gov.uk/publications/NICS%20Equality%20Report%202012.pdf>; and Cabinet Office (2012), Principal Civil Service Pension Scheme 2015 – Equality Impact Assessment, London: Cabinet Office, pp.9-11: <http://www.civilservice.gov.uk/wp-content/uploads/2011/12/120906-2015-EIA-doc-FINAL-2.pdf>.

differential impacts across different areas of public service (such as teachers, health service workers and police officers, all of which have different staff profiles).

HMT considered impacts in relation to proposals to change public service pensions. This analysis made the following observations in relation to the different components of the plans (again, however, a direct read across should not be assumed):

- **General impact** – Provisions may impact on persons differently by virtue of their age and gender;
- **Transition** – Only older members will benefit from transitional arrangements; men are over-represented in older age groups;
- **Linking Normal Pension Age to State Pension Age** – Women live longer, so will receive more pension in the long run, but men's salaries progress faster, so they will have a higher value pension; younger people will pay more over their lifetime, but their life expectancy will be longer in which to receive benefits;
- **Career Average Revalued Earnings** – benefits those on a lower salary growth, which means more women, minority ethnic groups and people with disability will benefit; (Further information on this is available at sub-section 4.7)
- **Cost control mechanism** – All groups are equally affected; and,
- **Reform of smaller schemes** – No differential impact.<sup>98</sup>

The Cabinet Office considered impacts in relation to the proposed Principal Civil Service Pension Scheme 2015. In general terms, the following equality impacts were noted (whilst again recognising a direct read-across cannot be assumed):

- **Career average** – Women and those with a declared disability are likely to benefit;
- **Accrual rate/indexation** – Benefits earned in a short early career will be less than the same period of service nearer retirement;
- **Linking the National Pension Age to the State Pension Age** – Younger scheme members are affected more than older members, but this is offset by improved life expectancy;
- **Member contribution rates** – Further consideration of the impacts is needed;
- **Death in service lump sum** – There will be greater impact on those with a serious health condition; further consideration is needed; and,
- **Ill-health benefits** – For those transferring from a Classic scheme to the 2015 scheme, benefits will be lower for conditions preventing work in the current role, but higher for conditions that prevent any form of work.<sup>99</sup>

In general, in addition to differentiating impacts across different areas of public service indicated above, two equality-related areas of potential impact not indicated in the literature are impacts on people whose careers are interrupted, such as to raise a family, and the effect of the proposals on part-time workers. Both of these dimensions predominantly affect women.

#### 4.6 Human Rights considerations

The Bill (as introduced) engages rights enshrined in the *European Convention on Human Rights (ECHR)*: they are:

- Article 1, Protocol 1 – Peaceful enjoyment of possessions - Refer to Appendix 1 for a fuller explanation of this Article in this context; and,

98 HM Treasury (2012), Public Service Pensions Bill: Central Equalities Impact Assessment, London: Cabinet Office.

99 Cabinet Office (2012), Principal Civil Service Pension Scheme 2015 – Equality Impact Assessment, London: Cabinet Office.



- Article 14 – Prohibition against discrimination - Refer to Appendix 2 for fuller explanation of this Article in this context.

This sub-section sets out human rights considerations arising from the following clauses of the Bill:

- Revaluation (Clause 9);
- Pension Age (Clause 10);
- Employer Cost Cap (Clause 12);
- Closure of Existing Schemes (Clause 19);
- Other Procedure (Clause 24); and,
- Additional Considerations to arise from secondary legislation.

Each is explained in the below paragraphs.

### **Revaluation (Clause 9)<sup>100</sup>**

When explaining this same clause in relation to the Westminster Bill, Treasury notes that the Clause:

*...provides that the pensionable benefits of active members are revalued year on year in accordance with scheme regulations, which will make reference to a rate set by the Treasury determining the general change in the level of prices or earnings. In the rare case that the general rate of prices and/or earnings falls, revaluation will take place according to a negative percentage, which will have the effect of shrinking the value of the benefits already built up by an active member. There is potential for argument that a revaluation could constitute an interference with property within the meaning of Article 1 Protocol 1, if the potential to accrue a larger pensionable benefit could be considered to be a 'possession', although as the possibility for negative revaluation is an inherent part of the pension benefits as they are earned this may be hard to sustain. The same issue arises in respect of clause 27, which makes applies the provisions of clause 8 to new pension schemes made by other public bodies.*

Treasury also argues:

*There is a legitimate aim. The element of revaluation in a career average revalued pension is designed to preserve the value of the pension within the context of the overall scheme cost while maintaining the balance of fairness between scheme members and taxpayers. Different schemes have done this in different ways, but the central method has been to adjust the value of the pension to reflect changes in prices or earnings, so that it represents a realistic source of income to the pensioner when compared to the market in which that income is to be spent. This clause as drafted achieves that aim, as the value of the pension is directly linked to the value of prices or earnings, and the purchasing power of the pension is also directly linked to the value of prices or earnings, so it maintains its level of purchasing power in the market. To restrict the revaluation to a positive percentage only would result in public service pensions benefitting from a rise in prices or earnings, but being insulated from a fall in prices and/or earnings to the detriment of the taxpayer, who would be expected to fund the shortfall. To more directly link the revaluation to the actual changes in prices and/or earnings removes this disparity and provides a more fair balance between the interests of the scheme member and those of the taxpayer.*

Treasury further maintains that:

*The proposed direct link between revaluation and fluctuations in the level of prices or earnings, to include falls in those levels, strikes a fair balance between the interference*

*to possessions and the legitimate aims of public service pension reform set out [earlier in relation to pensionable benefits]. This will not interrupt or remove any pension or other benefits in payment, nor will it prevent scheme members from continuing to accrue pensionable benefits. It is justified by the need to address rising longevity and the rising costs of public service schemes in addition to the matters noted when considering legitimate aims above.*

*In terms of legitimate expectation, the proposed changes do not amount to a barrier to effective enjoyment of pensions. The clause is clear in its effect, and the only legitimate expectation can be for the pension to be revalued with reference to the rise or fall of prices or earnings at the time of revaluation. There is no legitimate expectation that pensions will only be revalued upwards: all public statements on this policy have confined themselves to saying that pensions would be revalued according to an appropriately chosen index without making any commitment to upward only revaluation.*

At the time of compiling this Paper, CFP invited the Northern Ireland Human Rights Commission (NIHRC) to provide a briefing on the Bill, which could address the considerations outlined above, indicating whether in the NI context, it concurs with Treasury's view.

### **Pension Age (Clause 10)<sup>101</sup>**

When explaining this same clause in the Westminster Bill, Treasury notes that the Clause:

*...mandates that the normal pension age for schemes must equal the state pension age, except for the police, firefighters and armed services [the last not included in NI Bill]. A change in state pension age would mean that scheme members would be able to take only their full pensions accrued under the new schemes at an earlier or later age – although, as now, scheme members may choose to take their pensions earlier or later than normal pension age with an actuarial adjustment. This change would apply to all pensionable benefits accrued under the scheme, including those which accrued prior to the change in state pension age. It will not apply to benefits accrued under current pension schemes, but only to those accrued in schemes set up under the Bill. Similar provision is made in clauses 27 and 29 (which make similar provisions mandating this scheme feature in new pension schemes made by other public bodies, and enabling existing schemes to adopt it) and clauses 31 and 32 (which make similar provisions enabling Parliamentary and other pension schemes to adopt this scheme feature).*

Treasury argues that:

*This may constitute an interference with property within the meaning of Article 1 Protocol 1, as pensionable benefits that have been accrued are likely to be property within the meaning of that Article. However, it could be argued that all benefits accrued are subject to the link between normal pension age and state pension age, and so it could be said that there is no expectation to take full pension at a specific age: the expectation is that full pension will be taken at the then prevailing state pension age. In the event that there was any interference, a lowering of state pension age would be beneficial and any adverse interference would arise only if the level of state pension age rose.*

But Treasury asserts that:

*In the event that Article 1 Protocol 1 is engaged, it could also be argued that there is a legitimate aim, which was set out by the Independent Public Service Pensions Commission, chaired by Lord Hutton...*

*The proposed link between normal pension age and state pension age arguably strikes a fair balance between any interference with possessions and the legitimate aims of public service pension reform, in particular the aim of managing longevity risk in a way that is*

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Ibid, pg 5-7, paras 16-21.

*fair to scheme members and the taxpayer. The link will not interrupt, remove or reduce any pension or other benefits in payment, nor will it prevent scheme members from continuing to accrue pensionable benefits. It is an inherent feature of any benefit accrued under the new schemes that it was accrued subject to the condition that the full pensionable benefit can only be drawn at state pension age, whatever state pension age may be. The clause is explicit at subsection (4) that any change to state pension age will change the nature of the accrued benefits, and that feature has been built in from the moment any benefits begin to be accrued.*

Treasury states:

*The clause will not affect any benefits already built up in existing schemes which do not have that inherent feature. In the event that pension age changes it is correct that a scheme member will be unable to draw a full pension at the earlier age, because their pensionable benefits will always have been subject to this condition. As noted at paragraph 5(c) above, increasing longevity for those public servants who choose to work a full career, as well as the availability of flexible retirement and transitional arrangements, will lessen the impact upon those scheme members who are affected by any such change.*

But Treasury also observes that:

*...the Government is mindful of the fact that changes to state pension age may be based on considerations which are not directly determined by the new public service schemes. Any changes to state pension age will be made by primary legislation. The Government may consider at that point whether provisions which soften the impact of change upon those closest to being affected in public service pension schemes (such as a tapering effect protecting some scheme members from the full impact of change) could be implemented in order to ensure a fair balance between the impact on individual scheme members and the aim of managing increasing longevity with the consequent impact on scheme costs.*

Treasury states:

*The exception for active members of police forces, firefighters, and armed forces [the last not included in NI Bill] may also amount to discrimination within the meaning of Article 14, as they take pension at a different and lower normal pension age, set at 60. However, the reason that they are entitled to this normal pension age is in recognition of the unique characteristics of their work, which is not listed as a protected ground in Article 14 and may not come within the meaning of "other status". In the event that these scheme members cease to carry out this type of work, and become deferred members, they do not benefit from the exception. In the case that Article 14 is engaged, any discrimination can be justified. Government policy in this regard accepts the rationale set out in the independently produced Hutton Report, which concluded that "in the case of [the armed forces, police, and firefighters] where the Normal Pension Age should be set to reflect the unique characteristics of the work involved. The Government should therefore consider setting a new Normal Pension Age of 60 across [the armed forces, police and firefighters], where the Normal Pension Age is currently below this level in these schemes, and keep this under regular review".*

Treasury maintains that:

*In terms of legitimate expectation, it is not considered that the link between state and normal pension age in schemes set up under the Bill amounts to a barrier to effective enjoyment of pensions. The amount of unreduced pension earned in the new schemes is not altered; it simply cannot be accessed until a later date than first envisaged, and the cost of any delay will be offset by the payment of pensions over the course of a typical scheme member's increased life expectancy. The Courts have previously considered similar situations where the terms attaching to accrued pension rights have changed, and reiterated the wide margin of discretion to be afforded to the Government in these situations:*

(a) In respect of a claimed legitimate expectation to have public service pensions up-rated in accordance with the Retail Prices Index, the Court stated “absent a clear and unequivocal promise to the contrary, the only legitimate expectation is that the beneficiaries will be treated in accordance with whatever is the lawful policy in place at any particular time” and “the more far reaching are the consequences of holding Government to the promise, the easier it will be for the Government to establish that the countervailing public interest is sufficiently strong to justify the promise being overridden.

(b) When considering the up-rating of General Practitioners’ pensions, the Court ruled that any legitimate expectation to future changes attaching to an Article 1 Protocol 1 property right was capable of being proportionately interfered with by Ministers at the ‘macro’ level making decisions affecting large sums of public money.

**At the time of compiling this Paper, CFP invited the Northern Ireland Human Rights Commission (NIHRC) to provide a briefing on the Bill, which could address the considerations outlined above, indicating whether in the NI context, it concurs with Treasury’s view.**

### **Employer Cost Cap (Clause 12)<sup>102</sup>**

When explaining this same clause in the Westminster Bill, Treasury notes that the Clause:

*... provides for the establishment of an ‘employer costs cap’. If in the future scheme costs move beyond certain margins around this cap, as set by the Treasury, scheme regulations will take steps to bring costs back towards that level. This will be done by changing accrual rates for future benefits, adjusting member contribution levels, or some other adjustment or combination of adjustments. If an increase in scheme costs means that these adjustments need to be made, it might potentially be an adverse interference with possessions within the meaning of Article 1 Protocol 1, depending upon the facts as they are at that time. However, it is very unlikely that any interference with possessions will arise in the event that, as intended, no adjustments are made to benefits already accrued. The paragraphs below cover the hypothetical case that such an amendment is made, and should be viewed in this context. The cap mechanism will be symmetrical, so that any savings from a reduction in scheme costs can be returned to scheme members in the form of increased benefits, lower contributions, or otherwise. The same issues arise in respect of clause 27, which makes similar provision for new pension schemes made by other public bodies.*

Treasury maintains that:

*There is a legitimate aim. The Independent Public Service Pensions Commission recommended a wholesale reform of public service pensions, for reasons including the current unfair sharing of costs between the employer, the employee, and the taxpayer. The Commission considered cost capping as a part of reform, and recommended “The Government, on behalf of the taxpayer, should set out a fixed cost ceiling: the proportion of pensionable pay that they will contribute, on average, to employees’ pensions over the long term. If this is exceeded then there should be a consultation process to bring costs back within the ceiling, with an automatic default change if agreement cannot be reached.” The Government agrees with and has adopted this assessment, on the basis that it represents a fair balance of risk between scheme members and the taxpayer in the event that scheme costs rise.*

Finally, Treasury states that:

*The proposed cost cap strikes a fair balance between the interference to possessions and the legitimate aims of public service pension reform. It is clearly in the interests of members that public service pension schemes remain affordable and viable (in order that they are able to take the pension that they have accrued), and it is clearly in the interest*

102

Ibid, pgs 7- 8, paras 23-25.

*of the taxpayer that they should not bear alone the full risks of changes in the costs of public service schemes. The proposed cost cap incorporates a level of flexibility in that it (a) allows for costs to diverge from the cap within an effective margin before action is required, allowing schemes an opportunity for internal reform to keep costs under control, (b) provides a mechanism to allow all stakeholders the opportunity to agree on a method of adjusting costs in the event that this margin is breached, and (c) includes a final backstop to combat an unsustainable change in costs in the event that agreement cannot be reached.*

**At the time of compiling this Paper, CFP invited the Northern Ireland Human Rights Commission (NIHRC) to provide a briefing on the Bill, which could address the considerations outlined above, indicating whether in the NI context, it concurs with Treasury's view.**

#### **Closure of Existing Schemes (Clause 19)<sup>103</sup>**

When explaining this same clause in the Westminster Bill, Treasury notes that the Clause:

*...prevents scheme members from accruing any further rights in their existing schemes subject to exceptions for those who are closest to retirement. Similar provisions for closure of pension schemes made by other public bodies are made in clause 28.*

However, Treasury maintains that:

*...this clause does not engage Article 1 Protocol 1 because this Article does not guarantee a right to acquire further possessions such as benefits in the current pension schemes. Nor is there any discrimination on the grounds of age under Article 14 (as under current transitional plans the younger members of the scheme will be affected more by the changes) as Article 14 cannot apply in isolation. In any event, it is considered that any discrimination within the meaning of Article 14 can be justified. Younger members are likely to live longer than their older counterparts, and their extra longevity will balance out the higher age of retirement. They have more time to plan for retirement, and so have a greater flexibility ...In the majority of schemes, a taper will smooth the effects over those who are unable to benefit from full transition.*

**At the time of compiling this Paper, CFP invited the Northern Ireland Human Rights Commission (NIHRC) to provide a briefing on the Bill, which could address considerations outlined above, indicating whether in the NI context, it concurs with Treasury's view.**

#### **Other Procedure (Clause 24)<sup>104</sup>**

When explaining this same clause in the Westminster Bill, Treasury notes that the Clause:

*...allows for scheme regulations to contain provisions with retrospective effect. Such powers are common features of pension schemes, and feature in the enabling powers for the existing pension schemes. They are commonly used to update schemes to reflect changes in membership, tax, or general pensions law, and allow for administrative convenience in making such changes. The clause itself does not make any retrospective changes, but allows for such changes to be made in the future. In the absence of knowledge of what changes will be proposed, and in what circumstances, it is very difficult to quantify any potential interference with [ECHR] rights. However, some general points may be made.*

Treasury argues that:

*Any deprivation of possessions, or interference with their peaceful enjoyment, arising from a retrospective change must be justified within the meaning of Article 1, Protocol 1. This would be a high standard to discharge. The Courts have in the past intervened to prevent retrospective changes to such rights. For example, when considering the up-rating of GPs'*

103 Ibid, pgs 8-9, para 26

104 Ibid, pgs 9-10, paras 27-30

*pensions, the Court ruled that there was an enforceable legitimate expectation in relation to past service (therefore preventing retrospective changes). Any proposal for a retrospective change would be made in the knowledge that the government could expect the protections of Article 1 Protocol 1 to be strictly policed by the Courts (and scheme members would be able to obtain a swift and direct remedy), notwithstanding the margin of appreciation afforded to the Government in the fields of social and economic policy.*

Treasury further maintains that:

*There is the potential for Article 14 to apply to retrospective changes, but it is nearly impossible to assess the extent of any discrimination in the abstract. While the reforms are blind to protected characteristics such as age or gender, there is a potential for greater impact (and indirect discrimination) upon older members of schemes (who will be affected most by retrospective changes as they have the largest entitlements) and female and ethnic minority members (who as a whole are over-represented in the public sector). However, given the strict tests required to ensure that proposed retrospective changes do not breach Article 1 Protocol 1, it is unlikely that any measure which could pass those tests would not also carry sufficient justification and proportionality to satisfy Article 14.*

Finally, Treasury notes that:

*[the provisions] place additional protective measures on retrospective changes that might adversely affect the pensionable benefits of scheme members:*

*(a) in clause 20, which requires proposals for such changes to be subject to an enhanced consultation process, undertaken with a view to reaching agreement, and resulting in a report to Parliament upon the consultation; and*

*(b) in clause 21, which requires such changes to be made in regulations under the affirmative procedure (as defined in clause 34) and subject to greater Parliamentary scrutiny.*

**At the time of compiling this Paper, CFP invited the Northern Ireland Human Rights Commission (NIHRC) to provide a briefing on the Bill, which could address the considerations outlined above, indicating whether in the NI context, it concurs with Treasury's view.**

#### **Additional considerations to arise from secondary legislation<sup>105</sup>**

There are additional human rights considerations arising from provisions that are not included in the Bill; but are included in existing legislation pertaining to current schemes, which provide additional protection to members of those current schemes. They will be addressed in secondary legislation.

In its Memorandum to the Houses of Parliament Joint Committee on Human Rights about the Westminster Bill, (which the NI Bill largely mirrors), Treasury describes these legal protections as including, amongst other things:<sup>106</sup>

*(a) Consent locks, where a change cannot take place without the consent of scheme members.*

*(b) Opt in provisions, where a change cannot affect an individual scheme member until they have indicated their willingness (often by a set procedure) for it to apply.*

*(c) Opt out provisions, where a scheme member in certain circumstances (and often by a set procedure) opt that the change not apply to them.*

105 Ibid, pg 10, paras 31-33

106 Ibid, pg 10, para 31

Treasury argues that the lack of such provisions in the new schemes to be established under the Westminster 2013 Act does **not** constitute an interference with possessions under Article 1, Protocol 1. (Refer to Appendix 1 for an explanation of Article 1, Protocol 1 in this context.)

In light of the above, Treasury maintains that any actual or potential future interference arising from the 2013 Act is lawful, proportionate and justified. It further asserts that:<sup>107</sup>

*These features, and any rights which accrue as a result of them, are features of the existing schemes, and Article 1, Protocol 1 does not guarantee an open-ended right to acquire further possessions such as benefits in the current pensions schemes. Features of other, pre-existing, schemes will not transfer across to the new schemes set up under the [Westminster] Bill.*

**At the time of compiling this Paper, CFP invited the Northern Ireland Human Rights Commission (NIHRC) to provide a briefing on the Bill, which could address the considerations outlined above, indicating whether in the NI context, it concurs with Treasury's view.**

#### **4.7 Need to ensure schemes' members understand the value of their entitlement**

As noted above, the IPSPC identified transparency and simplicity as one of the key principles by which public service pension reform should be measured.

However, the closure of final salary schemes and their replacement with CARE pension schemes, when combined with the principle of protecting accrued rights, may impair the transparency and simplicity of some member's pension entitlement. Their pension will be made up of two components – one part calculated against final salary, and one part calculated against career average revalued earnings. It is obviously important that scheme members are able to understand how their pension entitlement will be calculated to better enable them to plan for their future. Therefore, Members may be interested in exploring how DFPs plans to inform scheme members of the status of their pension following implementation of the reforms contained in the recently introduced Bill.

#### **4.8 The effects of reform on low-paid scheme members**

The consequences of the current reforms will not impact upon all public service pension scheme members equally. Furthermore, the proposed reforms may accentuate the premium public service employees receive in contrast to private sector employees. The shift to CARE benefits those who experience low pay growth during their careers relative to those who experience more significant pay growth. The IFS note:

*On average, graduates in the public sector experience higher pay growth over their lifetimes than those with low levels of education...final salary schemes are found to be more generous, on average, to those with higher levels of education. However the career average scheme...is found to have similar levels of average pension accrual across each education group.<sup>108</sup>*

Therefore, the IFS conclude that whilst:

*these reforms will significantly reduce the generosity of these pensions for many public sector workers...we expect there to be a substantial group of lower-paid public sector workers for whom the new schemes will be even more generous than those they are replacing.<sup>109</sup>*

107 Ibid, pg 10, para 32

108 IFS Green Budget: February 2012, pg 107

109 IFS Green Budget: February 2012, pg 108

The Pensions Policy Institute (PPI) has produced work which supports this claim:

*The individual impact of the reforms on the value of the pension benefit available to a particular scheme member will be influenced by a wide range of factors including: the member's age and salary when the reforms are introduced, their salary progression and whether they leave public service early or stay in the scheme until they retire...*

*The coalition's proposed reforms will remove the different outcomes for high-flyers and low-flyers which exist in final salary schemes...under the Coalition Government's proposed reforms high-flyers and low-flyers have a pension benefit worth the same percentage of salary, with the average value of the pension offered being worth 15%<sup>110</sup> of salary for both members.*

*After the Coalition's proposed reforms the value of the pension received by lower earners will be higher as a percentage of their salary than that of higher earners, as higher earners must pay higher contributions for the pension they receive, compared to low earners.<sup>111</sup>*

The IFS place this within the context of their comparison of pension provision and pay in the public sector against that of the private sector, observing:

*Public sector workers will continue to accrue pensions that are dramatically more generous than those accrued, on average, by private sector employees, few of whom have access to a defined benefit pension. Those in the private sector least likely to have access to good employer provision are those on relatively low pay. Yet this is the group in the public sector for whom the reformed schemes are likely to be more generous than the final salary schemes they are replacing.<sup>112</sup>*

The PPI paper also considered the benefits offered by the main UK schemes compared to pensions offered in the private sector and concluded:

*...even after the Coalition's proposed reforms the benefit offered by all four of the largest public service pension schemes remains more valuable, on average, than the pension benefit offered by Defined Contribution (DC) schemes that are now most commonly offered to employees in the private sector, into which employers typically contribute around 7% of a DC scheme member's salary.*

*...A typical Defined Benefit scheme in the private sector has an average pension benefit value of 23% of a member's salary, assuming that the scheme benefits are linked to Consumer Prices Index (CPI). Some private sector schemes still have benefits linked to the Retail Prices Index (RPI), and for a typical private sector Defined Benefit scheme linked to RPI the average value of the pension benefit is 27% of a member's salary.<sup>113</sup>*

This outcome may provoke arguments that public service pensions need to be further reformed in order to be better aligned with private sector pensions. The IPSPC refuted this, claiming this sort of 'race to the bottom' would not be beneficial to society. This argument was supported in the *Financial Times*:

*The real problem here is not that public sector pensions will, even after these reforms, remain far too generous. It is that private sector ones have become far too mean. The only*

110 The paper produced by the PPI measured schemes by their Effective Employee Benefit Rate (EEBR). The EEBR is calculated by translating the value of a pension benefit into an equivalent percentage of salary that the scheme member would need to receive to compensate for the loss of the pension scheme. The EEBR is presented net of member contributions, so if the benefit structure was worth 20% of a member's salary, but they contributed 5% of their salary to the pension scheme the EEBR would be 15%.

111 PPI, A Pensions Policy Institute Briefing Paper on the impact of the Coalition Government's public service pension reforms, pg 12

112 IFS Green Budget: February 2012, pg 108

113 PPI, A pensions Policy Institute Briefing Paper on the impact of the Coalition Government's public service pension reforms, pg 5



way in practice to have achieved parity would have been to indulge in a “race to the bottom” that Lord Hutton specifically rejected. And such a race to the bottom would be in no one’s interest, producing, in the long run, only a larger reliance on state benefits. Those business voices urging the government to go further in cutting public sector pensions should instead be working with it to find ways to improve private sector ones - pensions for which people will have to work longer and pay more but which need, in the private sector, to be more generous.<sup>114</sup>

#### 4.9 Consultation – Regulatory Impact Assessment

Within the Summary of the Regulatory Impact Assessment in the Explanatory and Financial Memorandum which accompany the Bill when introduced, DFP state:

*The Bill will not impact on business, the voluntary sector or the environment. It has not therefore been subject to a regulatory impact assessment.*<sup>115</sup>

Given that the Bill is implementing such significant and long-lasting societal change, it seems unlikely that it will not impact upon businesses or the voluntary sectors.

For example, the requirement to work longer until receiving a public service pensions may reduce job-opportunities for the young. This would have an impact upon the local jobs market.

More specifically, one of the aims of the reforms is to increase the mobility of employees between the public and private sectors. This may increase the ability of private and voluntary sector groups to compete for the delivery of particular services. The Bill will do this through an extension of the ‘Fair Deal’ policy. Fair Deal is a non-statutory policy, introduced in 1999, which covers staff compulsorily transferred from the public sector.<sup>116</sup> The policy applies where:

- Public sector staff are compulsorily transferred to a new employer; and
- An outsourced public service where staff are transferred out under the Fair Deal policy in the past is re-tendered or returned to the public sector.<sup>117</sup>

Under the old Fair Deal arrangements, the new employer was required to offer transferring staff membership of a scheme which was “broadly comparable” to the one they were leaving. This was considered to be a barrier to mobility, as often the cost of providing a “broadly comparable” pension posed significant costs to a business or voluntary sector group. The Bill, as introduced, extends Fair Deal by allowing outsourced employees to remain members of their public service pension schemes. The Explanatory and Financial Memorandum states:

*The current Fair Deal policy is due to be amended to allow people under the above circumstances to retain access to their public service pension before the new schemes are introduced. Due to the restrictions on access to the PCSPS(NI), the new Fair Deal policy could not apply without a change to the primary legislation. Schedule 9 aims to make this change to allow access to people who are not currently entitled to access under the 1972 Order. The Schedule will come into force on Royal Assent, to ensure that the new Fair Deal policy can be implemented in relation to the PCSPS(NI) with immediate effect. Any delay may mean that staff who are being moved out of the civil service could miss the opportunity to remain in their current pension arrangements and delay progress of improvements to public service delivery.*<sup>118</sup>

114 Nicholas Timmins, ‘High-wire act fails to balance public and private schemes’, Financial Times, 11 March 2011

115 [http://www.niassembly.gov.uk/Documents/Legislation/Bills/Executive-Bills/session-2012-2013/Public\\_Service\\_Pension\\_Bill\\_EFM%20-%20As%20Introduced.pdf](http://www.niassembly.gov.uk/Documents/Legislation/Bills/Executive-Bills/session-2012-2013/Public_Service_Pension_Bill_EFM%20-%20As%20Introduced.pdf)

116 HC Deb, 14 June 1999, c 29-30W

117 HM Treasury, Consultation on the Fair Deal Policy: treatment of pensions on compulsory transfer of staff from their public sector, 2011.

118 [http://www.niassembly.gov.uk/Documents/Legislation/Bills/Executive-Bills/session-2012-2013/Public\\_Service\\_Pension\\_Bill\\_EFM%20-%20As%20Introduced.pdf](http://www.niassembly.gov.uk/Documents/Legislation/Bills/Executive-Bills/session-2012-2013/Public_Service_Pension_Bill_EFM%20-%20As%20Introduced.pdf)

Therefore, it seems **too early** to state that this Bill will have no impact upon the business or voluntary sector.

## 5 Conclusion

The Bill was prompted by the enactment of the 2013 Act in Westminster. The 2013 Act is intended to deliver public service pensions which are more sustainable, affordable and fairer than those which currently exist. The reforms create public service pensions schemes that are more in tune with the current demographic profile of the UK and with the evolving nature of public service delivery.

Deviations from the 2013 Act that involve additional costs will adversely affect the Block Grant. It is argued that there is little scope for variation in the passing of this primary legislation, but there will be greater scope when it comes to secondary legislation dealing with the terms of specific schemes. (This has been discussed at section 2.1.1.)

Finally, the UK Coalition Government intends for these reforms to deliver a sustainable public service pension for at least the next 25 years. However, their predictions are based upon a number of assumptions, which may or may not hold. It is therefore not certain whether this Bill will deliver the required long-term reform which is deemed necessary to create a stable public service pension landscape. After all, as the IFS point out, the previous Labour Government presented their reforms as delivering a long-term solution to affordability issues.<sup>119</sup> Yet eight years later, we are engaged in another round of significant reforms. It remains to be seen whether we have reached a period of long-term stability in this area.

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119 IFS Green Budget: February 2012, pg 109

## Appendix 1 - Article 1 Protocol 1 – Peaceful enjoyment of possessions

Article 1 Protocol 1 can be summarised as follows:<sup>120</sup>

*[It] provides that every natural or legal person is entitled to the peaceful enjoyment of his possessions; and that no-one shall be deprived of his possessions, except in the public interest and subject to the conditions provided for by law and by the general principles of international law.*<sup>121</sup>

*Deprivation of possessions or interference with their peaceful enjoyment may be justified if they:*

- (a) are subject to conditions provided for by law;*
- (b) are for a legitimate aim in the general interest; and,*
- (c) strike a fair balance between the rights of the owner of possessions and the public interest: in striking a fair balance any interference with the right must be reasonable and proportionate to the legitimate aim pursued.*

Case law reveals that:<sup>122</sup>

*Pensionable benefits that have already been earned or accrued (through length of service, payment of contributions, or otherwise) are widely accepted to be ‘possessions’ within the meaning of Article 1, Protocol 1 [R (Carson) v Secretary of State for Work and Pensions [2005] UKHL 37], although the exact nature of the benefits that have been earned or accrued requires careful examination of the [relevant] facts.*

*Article 1, Protocol 1 also extends to the legitimate expectation of obtaining effective enjoyment of a possession. [Kopecky v Slovakia, App No 44912/98, Judgement of 28 September 2004] However, Article 1, Protocol 1 does not guarantee an open-ended right to acquire further possessions such as benefits in the current pension schemes. [Markx v Belgium [1979] 2 EHRR 330] The general principles applied by the Courts in deciding whether interference with possessions is lawful are [Hutten-Czapska v Poland (2006) 42 EHRR 15 and (2007) 45 EHRR 4]:*

- (a) The principle of lawfulness presupposes that the applicable provisions of domestic law are sufficiently accessible, precise, and foreseeable in their application...*
- (b) The principle of a legitimate aim presupposes the existence of a general interest in the community which is inherent in the need for a fair balance...*
- (c) The principle of fair balance requires an investigation to ascertain whether any person bears a disproportionate and excessive burden, and whether in turn this has been fairly balanced with the legitimate aim. The Bill generally constitutes a fair balance between the interests of the members of public service pension schemes, and fairness to the taxpayer who underwrites them. Reform is justified by the need to address rising longevity and the rising costs of public service schemes, the risks and costs of which have so far fallen mostly upon the taxpayer. This macro-economic judgement has been recognised by the Courts as the preserve of Government policy which should not be interfered with short of manifest unfairness or impropriety, which the Bill does not constitute. The new pension schemes still constitute a pension of real value in excess of that which could be purchased on the*

120 Ibid, pgs 1-4, paras 4-11

121 Ibid, pg 1, para 4

122 Ibid, pgs 1-4, paras 4-11

*private market with commensurate investment, demonstrating that scheme members are being treated fairly. Further, the proposed new pension schemes remove an existing bias in favour of workers with better career progression. Any subsequent increase in state pension age will reflect increased longevity, meaning that public service workers will spend a similar proportion of their adult lives in retirement. Those who are most affected by the change will be protected by a combination of tapering, increased longevity, flexibility in retirement age, and preserved benefits from service in the old schemes. Finally, the Government has committed to keep the link between state pension age and normal pension age under review.*

It is important to note that:

*The Government is entitled to a margin of appreciation in the fields of social and economic policy. The margin is broader when Parliament creates primary legislation than when a Minister of State uses a power to create secondary legislation. [R (Sinclair Collis) v Secretary of State for Health [2011] EWCA Civ 437]*

*... (c) Article 1 Protocol 1 applies equally to non-contributory state benefits where entitlement to them arises under law.*

## Appendix 2 – Article 14 – Prohibition against discrimination

Article 14 provides that *ECHR* rights shall be secured without discrimination on any ground such as sex, race, ethnic origin, age, national or social origin, or any other status. It is important to emphasize that this is an illustrative and not an exhaustive list. [*Engel v Netherlands* (1976) 1 EHRR 647] Article 14 does not provide a free-standing right; instead it applies only when another *ECHR* right is engaged. In the context of the Bill, Article 1, Protocol 1 is the other right. In addition, a breach of Article 14 does not presuppose that the linked Article is breached. [*Airey v Ireland* (1979) 2 EHRR 305] Discrimination occurs when a public authority, for no objective or reasonable reason:

- treats a person less favourably than others in similar situations on the basis of a particular characteristic;
- fails to treat people differently when they are in significantly different situations; or,
- applies apparently neutral policies in a way that has a disproportionate impact on individuals or groups.

Discriminatory law or treatment is lawful where there is a reasonable justification for the measures imposed. This requires both a legitimate aim; and that there is a reasonable relationship of proportionality between that aim and the measures applied.

Apparently the Government enjoys a wide margin of appreciation in assessing whether and to what extent differences in otherwise similar situations justify a different treatment in law. It seems that the scope of the margin of appreciation varies according to the circumstances, the subject-matter and its background. [*Rasmussen v Denmark* A 87 (1984) 7 EHRR 371]

The level of justification required also varies, depending upon which ground is affected, and is higher in the case of discrimination on grounds such as race, sex, nationality, religion or sexual orientation.



Northern Ireland  
Assembly

## Research and Information Service Briefing Paper

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Paper 000/00

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**Michael Heery**

# Public Service Pensions Act – Consideration of Westminster Legislative Process

This paper seeks to inform the Committee for Finance and Personnel's consideration of the Public Service Pensions Bill (the current NI Bill). It outlines key findings of a review that was undertaken by the Research and Information Service to ascertain whether issues raised by stakeholders in Northern Ireland about the current NI Bill also arose during deliberations about similar public pensions reform legislation considered and then enacted in Westminster from October 2012 to April 2013. The paper further explains how similarly raised issues were resolved, noting the given legislative provisions that were enacted.

## 1 Introduction

This paper considers key issues that have been identified in stakeholders' written responses received by the Committee for Finance and Personnel (CFP) during the committee consideration stage of the Public Service Pensions Bill (the current NI Bill). It seeks to inform the CFP's consideration by reviewing the passage and enactment of similar public sector pensions reform legislation in Westminster throughout 2012-13, and explaining how similarly raised issues were resolved, noting the given legislative provisions that were enacted.

Firstly, this paper reviews the stakeholder responses received by CFP to highlight key issues they have identified. This can be found in Section 2.

Thereafter the paper tracks Westminster's consideration of similar legislation to see if and how similar issues arose, and if so, what the outcomes were for these issues. These can be found in Section 3.

Finally, a short conclusion is offered in Section 4.

## 2 Evidence Submitted to CFP

During committee consideration of the current NI Bill, the CFP has received written responses from the following stakeholders:

- British Medical Association (BMA);
- Northern Ireland Human Rights Commission (NIHRC);
- National Association of Schoolmasters Union of Women Teachers (NASUWT);
- Fire Brigades Union (FBU);
- Northern Ireland Public Service Alliance (NIPSA);
- Northern Ireland Local Government Association (NILGA); and,
- Northern Ireland Committee – Irish Congress of Trade Unions (NIC-ICTU).

A review of these responses reveals that the key issues identified can be grouped into the following categories; and for ease of reference, the relevant stakeholders are noted:

- **The Nature and Necessity of the Reform** – A number of the responses question the fundamental justifications for, and the nature of, the reforms outlined in the current NI Bill. This issue is raised with the response from NIPSA, BMA, and NASUWT. Such points are related to the principles that public service pensions should be adequate and fair, as well as affordable and sustainable.
- **Reform of the Normal Pension Age (NPA)** - These issues are raised within the responses from NIPSA, FBU and BMA. This is related primarily to the principle that public service pensions should be adequate and fair.
- **Concentration of Powers in Department of Finance and Personnel (DFP)** – These concerns centre around the provisions in the current NI Bill that – if enacted – would allow for the use of negative resolution to pass future amendments. These points are raised in the submissions made by NASUWT and BMA. They are related to the principles that public service pensions should be adequate and fair, as well as transparent and simple.
- **Respect for Accrued Rights** – The submissions made by NIHRC, NASUWT and SMA consider the implications of the current NI Bill for pension scheme members' accrued rights. The relevant key principles concerned are that public service pensions should be adequate and fair, as well as transparent and simple.

- **Equality** – The submission made by NASUWT raises issues concerning the impacts of the current NI Bill in terms of equality. The related principle is that public service pensions should be adequate and fair.

Each above-stated category is addressed in the following section.

### 3 Similar Issues Identified During the Westminster Legislative Process

This section uses sub-sections to examine if and how the issues noted above arose in Westminster during the passage of similar legislation, and if so, what the outcomes were for these issues. For ease of reference, also included in this section is discussion about the issues in the Northern Ireland context, highlighting potential issues for CFP’s consideration about the current NI Bill.

At the outset, it should be noted that the Westminster legislative process did not significantly amend the terms of the Public Service Pensions Bill (the Westminster Bill), and was enacted as the *Public Service Pensions Act (2013 Act)*. More specifically, during the House of Commons Committee Stage, no Opposition amendments were accepted. Of the amendments which were made to the Westminster Bill, “most were either “minor and technical” or clarified how provisions were intended to work”.<sup>1</sup> And during the House of Lords’ stages, all amendments made to the Westminster Bill:

*...were in the name of the Government Minister, except for two related to pension age for the members of the Defence Fire and Rescue Service and Ministry of Defence (MoD) Police, which were opposed by the Government. The House of Commons voted to reject these amendments on 22 April 2013. However, the Government subsequently accepted an opposition amendment to require a review of the effect of the Bill on the MoD fire and police services...<sup>2</sup>*

#### 3.1 The Nature and Necessity of the Reform

A number of the responses received by CFP outline a general opposition to the current public service pension reform process. Such responses argue that the reforms are not necessary at present; and that they do not meet the principles of public service pension reform, as set out by the Independent Public Service Pension Commission (IPSPC).

For example, the BMA response to CFP, reported that:

*The BMA accepts that the NHS Pension Scheme must offer a fair deal for taxpayers as well as staff. Many NHS employees have already been subject to a three year pay freeze and dealing with the combined effects of major funding pressures and structural reforms. The BMA strongly believes that there is no justification for the scale of the planned changes to public sector pensions or the speed at which they are to be implemented.<sup>3</sup>*

NASUWT’s response argues that the alleged underlying principle of the Bill that public sector pensions are unaffordable is “spurious”.<sup>4</sup> They believe that the necessary level of public service pension reform has already been achieved in previous reforms of public service pensions over the last decade.

The Westminster Government’s position is that the IPSPC Reports in 2010 and 2011 made clear that reform of public service pensions are essential. They argue their reforms

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1 Djuna Thurley, Public Service Pensions Bill: Committee Stage Report, House of Commons Library, Research paper 12/72. 29 November 2012

2 Djuna Thurley, Public Service Pensions Bill – Lords’ stages, House of Commons Library, Standard Note SN6572, 29 April 2013

3 BMA letter to CFP, dated 30 August 2013

4 NASUWT letter to CFP, dated 30 August 2013

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are consistent with the findings and recommendations made by the IPSPC. During the Westminster legislative process, the Opposition also made clear their acceptance that public service pensions required reform, and that the IPSPC recommendations provided a sound basis for doing so. Their criticisms generally arose where they found that there were deviances from the approach as taken in the Westminster Bill, and the recommendations of the IPSPC. They did not oppose the fundamental principles of the reform.

The enactment of the 2013 Act in Westminster thus created a legislative framework for Northern Ireland to rely on when considering its pensions reform. Whilst the Assembly has legislative competence to adopt its own arrangements for the public service pensions covered by the current NI Bill, the prevailing devolution arrangements – specifically the financial framework, including parity – would make Northern Ireland responsible for costs arising from legislative departures from the Westminster Act. For example, the cost of a failure to implement the 2013 Act in its entirety is estimated by the Department of Finance and Personnel at £300m per year.<sup>5</sup> Whilst unions have challenged the accuracy of this figure<sup>6</sup>, at present there are no alternative valuations. Even if there were, the fundamental point remains that failure to implement the reforms in full would result in a reduction to the block grant, given the existing financial framework for devolution. This is a significant issue for consideration by CFP.

### 3.2 Reform of the Normal Pension Age

The current NI Bill links the Normal Pension Age (NPA) to the State Pension Age (SPA) for all public service pension schemes. The only exceptions to this in Northern Ireland are the schemes for the police and for firefighters, where the NPA will be set at 60.

The main justification for this reform is that schemes must reflect the increasing longevity of former members.

This aspect of the reform package has been particularly controversial, and has provoked criticism in Westminster and Northern Ireland. The main criticisms have been:

The special provision for firefighters is insufficient;

That special provision should be made for further categories of public service employees who work in physically demanding roles; and,

The current NI Bill should include provisions related to future changes to the SPA

#### 3.2.1 Insufficient special provision for firefighters

The FBU's response to CFP relies on research, which they say supports the FBU's view that an NPA of 60 for firefighters is not workable. They suggest that the current NI Bill should be amended to allow flexibility within scheme regulations for the specifying of an NPA below 60.<sup>7</sup>

This echoes arguments raised by the FBU and the Opposition during the legislative process at Westminster for the 2013 Act. In the House of Lords, the Opposition argued that the Williams Review provides "medical evidence that working beyond 55 is not attainable by most current firefighters"<sup>8</sup>. The Government, refusing to consider extra measures, argued:

*We are not, and nor should we be, in the business of reducing pension ages given the longevity challenges we face. To do so would go against all that the Bill is designed to achieve...*

5 DFP letter to CFP, dated 21 June 2013

6 For example, during the ICTU presentation to CFP on 09 October 2013.

7 FBU letter to CFP, dated 30 August 2013

8 HL Deb, 12 February 2013, c606

*The [Williams] report projects that in circumstances where people maintain their physical activity levels and BMI, individuals could maintain operational fitness in many cases until their mid-60s. We simply do not believe that it is necessary to make an amendment which enables a lower pension age than 60 for members of the firefighters' scheme, or for the police and armed forces schemes.<sup>9</sup>*

CFP may be interested in investigating the desirability or potential for breaking parity with the 2013 Act on this provision, by considering the amendment proposed by the FBU.

### 3.2.2 Special NPA provision for further categories of employee

The BMA's response to CFP notes that the Westminster Act has pre-empted the work of the *Working Longer Review*, which is currently undertaken by the United Kingdom Government, employers and health unions to investigate the planned increase of the NPA to 68 in 2046. As a result, the BMA see the 2013 Act, and the current NI Bill, as ignoring this process. As a consequence, evidence-based recommendations as to whether certain physically, emotionally or mentally demanding roles in the health services should have a lower NPA will be ignored.<sup>10</sup>

This critique echoes similar criticism made from across the public sector, and by the Opposition, throughout the Westminster process. For example, during the Second Reading of the 2013 Act, a member of the Opposition asked:

*The Chief Secretary talks about longevity, but what does he think the proposals will mean for the longevity of a mental health nurse who is 67 and a half years old, goes to work every day and ends up literally fighting with patients?<sup>11</sup>*

The Government's position throughout the Westminster legislative process was that no further concessions could be made in relation to reducing the NPA for particular categories of employee. During the House of Commons Public Bill Committee stage, the Opposition proposed an amendment to allow additional categories or worker to be exempt from the SPA link. This proposal was defeated by a vote in the Committee, with the Government arguing:

*The Independent Commission was clear that the work of police, firefighters and the armed forces is unique and that that should be reflected in their normal pension ages...*

*The Government commend the work and commitment of all the diverse work forces that make up the public service, but it is important to aim for consistency and commonality, unless there is a compelling reason to the contrary. The Government are confident that the pension age provisions are correct and therefore, **do not see the need to exempt any further members from the state age link as a result of future undefined capability reviews.**<sup>12</sup>*

The Opposition also raised the working of the on-going NHS Working Longer Review. They asked what would be the result if this review recommended a different retirement age for certain staff categories – would there be a legislative means to reflect this in relation to the 2013 Act? The Government responded:

*The review was considering the implications of working longer for NHS staff, not the SPA link.<sup>13</sup>*

9 HL Deb, 12 February 2013, c606

10 BMA letter to CFP dated 30 August 2013

11 Second Stage Readings, 29 October 2012, c59

12 HL Deb, 13 November 2013, c327

13 Djuna Thurley, Public Service Pensions Bill: Committee Stage Report, House of Commons Library, Research paper 12/72. 29 November 2012, p17

The Government appear correct in this assertion, in that the terms of reference for the Working Longer Review require it to consider three areas:

- Evidence of the impact of working beyond 60;
- Good employment practice and developing career pathways; and,
- Consider links between scheme flexibilities and the concept of total reward.<sup>14</sup>

However, there remains a question as to what will happen should the review find there to be significant detrimental effects upon particular employees who work beyond the age of 60. The Government's response does not add any clarity to this issue. Despite the Government's assertions that there are no further categories of public service employee, outside those specified in the 2013 Act, the problem of the consequences of an increase in the NPA for employees with physically demanding jobs across the public services remain.

The Government's main response to this has been to point out that the NPA is not the age to which someone is obliged to work to. Rather, it is the age at which one is entitled to receive their full value pension. The Government pointed out:

*Clearly, if people wish to retire earlier, they can do so and take an actuarially reduced pension or, indeed, retire later and take an actuarially enhanced pension.<sup>15</sup>*

This option does not appear entirely satisfactory. It ignores the situation where workers, who do not wish, or cannot afford, to take early retirement, but find the completion of their duties impossible due to age-related decline. The only other suggested possible resolution to emerge from the Westminster process, is found in comments made in the Commons Public Bill Committee evidence session by a representative from the Pensions Policy Institute:

*People may have to retrain and perhaps work in more of a back-office environment, rather than being at the front line...my general point is that if you have trained as a teacher, you have a set of skills and there are probably other jobs out there. It might not just be about front-line teachings...we just need to be more flexible about that and recognise the skills that older people have.<sup>16</sup>*

Whilst this may be the most likely work-around for employees nearing their NPA in the future, at this stage it is unclear how anything like this would work in practice, and appears that it will represent a significant challenge to employers and to Government.

CFP may wish to consider whether there is any merit in a fuller investigation of the types of jobs affected by this problem, and the organisational, societal, and financial implications associated with it.

### 3.2.3 Arrangements for future changes of the State Pension Age

Two main issues have been raised in both Northern Ireland and Westminster around the future arrangements for changes to the SPA. The first is that the current NI Bill does not make provision for the regular review of the link between the SPA and the NPA, as raised in the BMA's submission to the CFP.<sup>17</sup> This criticism was also voiced throughout the Westminster legislative process. There it was linked to further recommendations that it would be desirable that arrangements be put in place to manage the future changes to the SPA.

14 Working Longer Review Terms of Reference: <http://www.nhsemployers.org/SiteCollectionDocuments/Working%20longer%20review%20-%20initial%20terms%20of%20reference.pdf>

15 Second Stage Reading, 29 October 2012, c61

16 Public Bill Committee, 2nd Sitting, 6 November 2012, p177

17 BMA letter to CFP dated 30 August 2013

During the Second Reading in the Commons the Shadow Chief Secretary to the Treasury argued:

*When Lord Turner carried out the review of state pensions for the previous Government, he recommended a 15-year notice period be given, and the Pensions Policy Institute recommends a 10-year notice period. Such notice needs to be given and it is not enshrined in this Bill.*

...

*We think that the Bill should reflect Lord Hutton's recommendations that the link between public service pension ages and the state pension age should be kept under review and that this should be conducted by a properly independent body, with public service employees and employers represented and consulted. The Chief Secretary to the Treasury said in his speech that that will happen, but it is not guaranteed in the Bill – indeed, it is unclear whether it is even compatible with the Bill.<sup>18</sup>*

In the Public Bill Committee, the Opposition recommended that a provision should be included to ensure that scheme members would receive at least 10 years notice prior to future increases in their NPA. The Government were reluctant to do this, citing an on-going review by the Department for Work and Pensions of how the SPA should change in future. The Government deemed it inappropriate to pre-empt the findings of this work.

With regard to the need to enshrine regular reviews of the legislation, the Government did not feel this was necessary, stating:

*The Government have already committed to reviewing the state pension age, which underpins the public service pension age provisions, to ensure that it keeps pace with increases in longevity. In the light of that, it is also sensible to wait for clarity on the timing and regularity of state pension age reviews before finalising the arrangements for reviewing pension age provisions.<sup>19</sup>*

The Government argued any future change of the SPA would be made through legislative change, which would require proper parliamentary scrutiny processes.<sup>20</sup>

CFP may wish to consider whether there is any merit in enshrining arrangements concerning any future changes of the NPA for public service pensions in Northern Ireland.

### 3.3 Concentration of Powers in DFP

A number of unions are concerned with the extent to which the current NI Bill concentrates powers relating to public service pensions within DFP. They are concerned that the current NI Bill empowers DFP to make amendments in the short-term future, which undermines the stated underlying aim of the current NI Bill – that is, to represent a long-term arrangement for public service pensions.

The BMA's response to the CFP notes that under clause 11 of the current NI Bill, scheme valuations will be conducted through direction from DFP, with DFP determining the method, data and assumptions to be used. The BMA argue that these powers need to be tempered with a requirement to consult more widely than just the Government Actuary Department.<sup>21</sup>

NASUWT raise concerns about the extent to which DFP is empowered, and how those powers are subject to only negative resolution. For example, Clause 8 gives new powers to DFP to define and redefine the arrangements for public service provision. They consider that such

18 Second Stage Reading, 29 October 2012, c70

19 Public Bill Committee Debate, Fifth Sitting, 13 November 2012, c340

20 Public Bill Committee Debate, Fifth Sitting, 13 November 2012, c341

21 BMA letter to CFP dated 30 August 2013

powers should be subject to full consideration of the democratic process, through affirmative procedures.<sup>22</sup>

These concerns reiterate points made during the Westminster legislative process. During Second Reading in the Commons, the Shadow Chief Secretary to the Treasury argued:

*We think it is right that public service workers should be given as assurance that their pension savings will not be vulnerable to further arbitrary and unfair changes without adequate scrutiny and debate, but the Bill seems to be riddled with loopholes, excluding a number of important scheme features from the list of “protected elements” and stating that the “high hurdle” can be bypassed in order to meet a cost cap that is in turn set by the Treasury with no such requirement for consultation and report.<sup>23</sup>*

During the Public Bill Committee stage, a number of unions reiterated these points. The representative from Unison stated:

*We are concerned that, on the face of it, the measure seems to be giving a lot of power to the Treasury to direct changes, when we believe the emphasis should be on the governance of the individual schemes to do the job. We are also concerned at some of the wide-ranging wording within the Bill that seems to allow a future Government or a future interpretation to change schemes completely without proper consent from Parliament. We are worried about the negative procedure as opposed to the affirmative procedure.<sup>24</sup>*

The TUC representative argued:

*...the Government’s commitment that these reforms should last a generation. The shorthand is the 25-year guarantee that clause 20 attempts to introduce by looking at consultation and reporting requirements. Our concern about that is that it is actually very narrowly drafted as it picks out only three protected elements. It leaves aside things such as the revaluation rate, ill-health provisions, eligibility to join the scheme and the pension increase rate. There are lots of factors that, if they were changed, would have a significant impact on members. That is also potentially undermined by clause 3, which includes the provision to make retrospective changes.<sup>25</sup>*

The BMA suggested:

*We would like to see proper mechanisms for consultation and – this is similar to some other comments – we would like to see it being subject to the affirmative procedure, so that we get away from the potential in the Bill for people simply to write in the rules and regulations regarding pension schemes without having to open themselves to proper scrutiny.<sup>26</sup>*

In light of these criticisms, the Opposition proposed an amendment during the Public Bill Committee stage, which would insert additional protected elements of pension schemes to include; a scheme’s definition of pensionable earnings; ill health benefits; and, early retirement rights.

The Government rejected this suggestion, arguing it would restrict the ability of schemes to respond flexibly to future changes in circumstances. The amendment was defeated in the Public Bill Committee.<sup>27</sup>

The CFP may be interested in investigating whether affirmative or negative resolution is most appropriate for each of the above-stated DFP powers, which are proscribed in the current NI Bill.

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22 NASUWT Letter to CFP, dated 30 August 2013

23 Second Stage Reading, 29 October 2012, c72

24 Public Bill Committee, First Sitting, 6 November 2012, p143

25 Public Bill Committee, First Sitting, 6 November 2012, p151

26 Public Bill Committee, First Sitting, 6 November 2012, p159

27 Public Bill Committee, Seventh Sitting, 20 November 2012, c410

The Committee may also find merit in investigating on the potential for breaking parity by granting enhanced protection procedures to features not included in the 2013 Act. For example, do CFP consider granting enhanced protection to additional pension features, in order to demonstrate a commitment to this being a long term-settlement of public service pensions? This may enhance employee confidence in the reform, and mitigate the threat of increasing numbers of employees opting out. The consequence of this would be where the Westminster Government implement a change to an unprotected element, the responsible authority in Northern Ireland would engage in a full consultation with those affected with a view to agreeing on the reform with them, and would lay a report in the Assembly. This would allow the Assembly to fully investigate the issue. The fundamental issue would remain, that were such a process to result in deviations from the approach adopted at Westminster, the Northern Ireland Assembly would be responsible for these costs.

### 3.4 Respect for Accrued Rights

The Westminster Government's stated position throughout this reform process has been that:

*It is not our intention to play with accrued rights. Everyone accepts the general principle that those rights must be protected.*<sup>28</sup>

The Pension Policy Institute states this as a fundamentally important principle:

*[Retrospectivity] has been a commonly held principle in almost all aspects of pensions policy. You do need to be quite careful about blurring that distinction because pensions are about confidence. There is a long-term promise – people promise to pay you in 30 or 40 years' time – and if you get any sense that that promise might not be honoured, that could be corrosive.*<sup>29</sup>

Within Northern Ireland, concern has been raised about the vagueness concerning the provision granting retrospective powers. In its submission, the NIHRRC notes:

*Legislation must be accessible and drafted in a manner which is sufficiently clear to enable foresight of its consequences. The Commission expresses concerns over the legal certainty of clause 23.*

...

*As the clause does not make a retrospective change itself, only permitting regulations that do, it is not possible to comment on the specific human rights implications of regulations under this clause [at this time as the content of the regulations is unknown].*<sup>30</sup>

Such concerns were raised throughout the Westminster legislative process. During the Public Committee Stage, the Opposition voiced concern about the lack of a definition of accrued rights within the Westminster Bill. This echoed comments made by Lord Hutton in his own evidence to the Committee:

*I am a great admirer of the legal profession – I am a lawyer – and if you are going to use such terms [as accrued rights] and chuck them about in a Bill, you need to be really clear about what you are referring to, because you are just inviting someone to test the water. Again, you can never preclude that, but the benefit of having this Bill – there are very strong benefit from having such a Bill at this time – is to resolve these issues, not to leave them hanging in the air.*<sup>31</sup>

28 Public Bill Committee, Fifth Sitting, 13 November 2012, c344

29 Public Bill Committee, Second Sitting, 6 November 2012, p175

30 NIHRRC Letter to CFP, dated 5 September 2013

31 Public Bill Committee, First Sitting, 6 November 2012, p162

The Government accepted there were concerns, but responded:

*... if we try to define accrued rights in the Bill, there is a risk of coming up with a definition that acts as a minimum. Without intending to do so, one might end up taking out some accrued rights from one particular scheme because a minimum definition had been provided. That clearly would not be the intention of providing a definition of accrued rights... It is not our intention to play with accrued rights. Everyone accepts the general principle that those rights must be protected...*<sup>32</sup>

Compounding this lack of clarity and definition of accrued rights, many unions fear the potential future implications of the powers within the current NI Bill for DFP to make retrospective provisions. The BMA's submission recommends:

*Stronger amendments to the Bill are necessary to curtail new sweeping powers that would allow successive Executives to make unilateral and retrospective changes to accrued benefits in public sector pension schemes, utterly undermining the 'settlement for a generation' as promised by the UK Government.*<sup>33</sup>

In this context, during the House of Commons Public Bill Committee Stage, the Government rejected a proposed amendment that would mean any retrospective changes affecting accrued rights could be made only with the consent of scheme members or their representatives.<sup>34</sup>

At Lord's Committee Stage, the Opposition argued that the retrospective provisions within the Westminster Bill were unreasonable and unethical.<sup>35</sup> At Report Stage, the Government amended the Bill in relation to retrospective changes that could be deemed to have "significant adverse effects" on scheme members. Such retrospective changes would now require the consent of scheme members who were affected, or the consent of their representatives.

The Opposition remained concerned that this amendment did not go far enough, in that it left responsibility for determining whether a change had a "significant adverse effect" in the hands of the responsible authority. The Government argued that should a responsible authority not behave correctly in this regard, scheme members and their representatives had recourse to the courts.<sup>36</sup> Yet, this response may offer little protection to those on low incomes when a change is implemented which the responsible authority do not deem "significant". Such an individual may have a different view on the significance of an adjustment from the responsible authority. As the Opposition noted:

*The Minister argued...that there are protections under the European convention of human rights that are justiciable and that any members of those schemes can go through the elongated and far from swift processes of applying for judicial review. How on earth would they pay or cope with that? What if there was just a change to their accrued benefits of several hundred pounds? The prospect of having to take that all the way through to the European Court of Justice is absolutely disproportionate.*<sup>37</sup>

Finally, the NASUWT response argues that the provision in the current NI Bill allowing for the negative revaluation of accrued pensions, is a breach of the commitment to protect accrued rights, if the change in prices or earnings is negative.<sup>38</sup>

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32 Public Bill Committee, Fifth Sitting, 13 November 2012, c344

33 BMA letter to CFP dated 30 August 2013

34 Djuna Thurley, Public Service Pensions Bill: Committee Stage Report, House of Commons Library, Research paper 12/72. 29 November 2012

35 HL Deb, 9 January 2013 c189

36 HL Deb, 12 February 2013, c578

37 Public Bill Committee, Third Sitting, 8 November 2011, c238

38 NASUWT letter to CFP dated 30 August 2013

In the Public Bill Committee, the Government argued:

*It is important to note that the clause theoretically allows for negative revaluations. It is extremely rare for negative growth to occur. For example, CPI, the Government's preferred measure of prices, has never been negative. None the less, it would be unfair for members to benefit from the upside risk of revaluation but be shielded from the downside risk.<sup>39</sup>*

The Committee may be interested in exploring the possibility of defining accrued rights, or in defining what exactly "significant adverse effects" are, within the NI Bill.

### 3.5 Equality

NASUWT's response to the CFP criticises the lack of a full Equality Impact Assessment for Northern Ireland by DFP.<sup>40</sup> DFP explained the equality dimensions of the current NI Bill as follows:

*With regard to age, it was determined that that was mitigated through the transitional protection measures that are included in the Bill. Also, the policy reflects the Government's approach of removing default pension ages to address trends in longer life expectancy and historical inequalities. Newer, younger staff have higher pension ages than the older staff because of the reform of schemes in the past. In relation to the gender issue, there is the issue of longer life expectancy in general, but, importantly, although women are expected to live longer, in the public service, men typically earn more. In introducing the career average schemes, higher earners will continue to receive higher pensions, but with a fairer, more proportionate method of calculation.<sup>41</sup>*

These findings are broadly in line with the assessment of the equality implications of the Westminster Bill, as compiled by HMT:

*The Government does not consider that the common features of the Public Service Pensions Bill will result in any differential impact to persons with the following protected characteristics: disability, ethnicity, age, religion or belief, gender reassignment, pregnancy and maternity, sexual orientation and marriage/civil partnership...*

*Provisions may impact on persons differently by virtue of their age and / or gender. However, the Government does not consider that these impacts are unlawful or disproportionate. There is a clear justification for the approach we propose to take, as set out later in the chapter.<sup>42</sup>*

However, during the Westminster legislative process a number of interesting equality implications were raised, such as:

- It has been noted that women tend to drop out of the labour market at a younger age than men. Therefore, it has been argued an evidence base exists for arguing that women may require a longer period of lead-in to changes of the NPA than men.<sup>43</sup>
- The implications of there being a difference in life expectancies for people with different levels of income. A Member of the Public Bill Committee noted that, in her constituency of Oldham East and Saddleworth, people in Oldham East will live 10 years less than people in more affluent Saddleworth. Furthermore, there are issues in relation to quality of life. People on low incomes may not only live shorter lives, but

39 Public Bill Committee, Fifth Sitting, 13 November 2012, c308-9

40 NASUWT letter to CFP, Dated 30 August 2013

41 Department of Finance and Personnel (2013), Screening Flowchart and Template for the Public Service Pensions Bill: <http://www.dfpni.gov.uk/public-service-pensions-bill-equality-screening-document.pdf>

42 HM Treasury, Public Service Pensions: central equalities impact analysis, September 2012, p7

43 Public Bill Committee, Second Sitting, 6 November 2012, p173



may also be less healthy in terms of their mobility – they are more likely to experience disability.<sup>44</sup>

- The CFP may be interested in considering whether the equality impacts of the current Bill have been fully and robustly investigated; whether there is any merit in more detailed analysis?

## 4 Conclusion

None of the issues raised in submissions made to CFP appear to be either new, or entirely Northern Ireland specific. Essentially they restate criticisms voiced during the Westminster legislative process.

The fact they have been identified again reflects that the Westminster Government did not amend its Bill in response to these complaints. This paper presents the main arguments of the Westminster Government in relation to each of these issues. In many instances the Government's response was a refusal to reconsider the particular issue in question. This paper has sought to clarify the Westminster Government's key arguments against issues raised during the Westminster legislative process.

The paper also identifies some issues that CFP may wish to consider further, to investigate whether it may be appropriate given Northern Ireland's circumstances and interests to depart from parity by introducing terms that are different to the Westminster Act. Of course such considerations must include discussion about the potential costs arising from any such departures given the financial framework existing under the prevailing devolution arrangements: under parity, the cost of providing enhanced pension scheme measures would be deducted from the block grant.

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44 Public Bill Committee, Second Sitting, 6 November 2012, p177







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