

LEGISLATIVE CONSENT MEMORANDUM

THE PENSIONS (SPECIAL RULES FOR END OF LIFE) BILL

Draft Legislative Consent Motion

1. The draft motion, which will be tabled by the Minister for Communities, is:

“That this Assembly agrees, in line with section 87 of the Northern Ireland Act 1998, the principle of the extension to Northern Ireland of the provisions of the Pension (Special Rules for End of Life) Bill as it relates to the definition of terminal illness contained in clause 1 of the Bill, which was introduced in the House of Commons on 06 December 2023.”

Background

2. This memorandum has been laid before the Assembly by the Minister for Communities under Standing Order 42A(2). The Pensions (Special Rules for End of Life) Bill was introduced in the House of Commons on 06 December 2023. The latest version of the Bill can be found at:

<https://bills.parliament.uk/bills/3543>

Summary of the relevant parts of the Bill and its policy objectives

3. The Bill amends the definition of terminal illness in the Pensions Act 2004 and the Pensions Act 2008 so that people with a life expectancy of up to 12 months can receive terminal illness payments from the Pension Protection Fund (PPF). The Bill also amends the Financial Assistance Scheme Regulations 2005 to ensure consistency across the PPF and Financial Assistance Scheme (FAS) landscape.
4. The PPF and the FAS are compensation schemes that make payments to members of eligible defined benefit pension schemes where the sponsoring employer becomes insolvent and/or the scheme is unable to secure its pensions.
5. Both these amendments to extend the terminal illness definition to 12 months will ensure that affected members of the PPF and FAS will be able to receive

payments at an earlier stage in their illness, receiving financial support they need at a very difficult time in their lives.

Provisions which deal with a Devolution Matter

6. The provisions which deal with a transferred matter relate to the Pensions (Special Rules for End of Life) provisions in the Pensions (Northern Ireland) Order 2005 and Pensions (No.2) Act (Northern Ireland) 2008 that allow for the definition of terminally ill as being twelve months instead of six. The amendments aim to simplify and clarify how these provisions operate.
7. Clauses 1(3) and 1(4) of the Bill now make amendments to the Pensions (Northern Ireland) Order 2005 and the Pensions (No.2) Act (Northern Ireland) 2008 to amend the definition of “terminally ill” from six months to twelve months.
8. Clause 2(2) extends the relevant parts of clause 1 to Northern Ireland.
9. Clause 2(3) extends clause 3 – the short title of the Bill – to Northern Ireland.
10. Clauses 2(5), 2(8) and 2(10) also apply to Northern Ireland.

Reasons for making the Provisions

11. The Pension Protection Fund (PPF) was established by the Pensions Act 2004 and operates UK wide. It pays compensation to members of eligible defined benefit pension schemes where the sponsoring employer became insolvent on or after 6 April 2005 and the scheme has insufficient assets to secure its pension liabilities at least to the level of compensation that would be payable by the PPF. The Financial Assistance Scheme (FAS) at its inception applied to schemes that started to wind up between 1 January 1997 and 5 April 2005. Since its inception it has been reviewed and extended both in terms of its coverage and the amount of assistance that it pays. The FAS makes payments to members of qualifying schemes that are unable to secure their pension liabilities in full.
12. Currently, the PPF can make a one-off lump sum payment to someone who has not yet drawn their PPF compensation but is terminally ill. The FAS makes similar provision through allowing early payment of financial assistance. Both the PPF legislation and the FAS regulations use the same definition of terminal illness.

13. Terminal illness is currently defined in pensions legislation as: “if ... the person's death in consequence of that disease can reasonably be expected within 6 months.” This means that both the PPF and FAS currently make payments where medical evidence shows that a member has a life expectancy of up to 6 months.
14. This eligibility criteria were set in line with the social security special rules for end-of-life provisions for certain benefits originally introduced in 1990. The eligibility rule for these benefits was extended to 12 months by the Social Security (Special Rules for End of Life) Act 2022. The changes in this bill restore the original policy intent that there be alignment between the two sets of measures.

Reasons for utilizing the Bill rather than an Act of the Assembly

15. Although pensions are a devolved matter, there is, in effect, a single system of pensions in Northern Ireland and Great Britain, including many pension schemes which operate across the jurisdictions.
16. If it is agreed that provisions in the Bill extend to Northern Ireland, this allows these important provisions to be enacted across the jurisdictions at the same time. This provides legal clarity and certainty for schemes seeking to remove inequalities from their scheme members.
17. If it is not agreed that provisions in the Bill extend to Northern Ireland, it would be necessary to bring forward a separate Assembly Bill to ensure that parity between the jurisdictions is maintained. However, this would mean people in Northern Ireland would not benefit from the extension of the terminally ill provision to 12 months at the same time as those in the Great Britain.
18. The intention is that the Bill should have completed its passage through the House of Commons as early as March/April 2024. It would, therefore be beneficial timewise to agree that the relevant provisions in the Bill extend to Northern Ireland.

Consultation

19. There is no requirement to consult on this policy. Although pensions are a devolved matter, in effect there is a single pension system and regulatory regime across both jurisdictions. Many private pension schemes operating in NI are UK-wide schemes. Therefore, it is highly desirable that the same provisions are in place in NI to ensure parity across both jurisdictions.

Human Rights and Equality

20. The provisions of the Bill are considered compatible with the Human Rights Act 1998.
21. An equality screening exercise has been carried out and the Department is satisfied that the proposed amendments have no significant implications for equality of opportunity.

Financial Implications

22. No costs to the public purse are expected.

Summary of Regulatory Impact

23. A Regulatory Impact Assessment is not required for the Bill as it has no direct impact on business, charities or voluntary bodies.

Engagement to date with the Committee for Communities

25. The Committee has been consulted as part of the Legislative Consent Motion process.

Conclusion

26. The view of the Minister for Communities is that, in the interests of good government, the provisions of the Bill dealing with devolution matters should remain in the Bill.

Department for Communities

Date: XX February 2024