



Northern Ireland  
Assembly

**Committee for Communities**

# Report on Legislative Consent Memorandum on The Pensions (Special Rules for End of Life) Bill 2024

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End of Life) Bill 2024

**Contents**

Powers and Membership ..... 2

Background ..... 3

Evidence submitted to the Committee ..... 5

Consideration of the Legislative Consent Memorandum by the Committee ..... 6

Links to Appendices ..... 9

## **Powers and Membership**

### **Powers**

1. The Committee for Communities is a Statutory Departmental Committee established in accordance with paragraphs 8 and 9 of Strand One of the Belfast Agreement and under Assembly Standing Order No 48. The Committee has a scrutiny, policy development and consultation role with respect to the Department for Communities and has a role in the initiation of legislation.
2. The Committee has 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 relevant primary legislation;
  - call for persons and papers;
  - initiate enquiries and make reports; and
  - consider and advise on matters brought to the Committee by the Minister of Communities.

### **Membership**

3. The Committee has nine Members, including a Chairperson and Deputy Chairperson, and a quorum of five Members. The membership of the Committee is as follows:

Mr Colm Gildernew (Chairperson) MLA  
Ms Ciara Ferguson (Deputy Chairperson) MLA  
Ms Kellie Armstrong MLA  
Mr Andy Allen MBE MLA  
Mr Maurice Bradley MLA  
Mr Maolíosa McHugh MLA  
Ms Sian Mulholland MLA  
Mr Brian Kingston MLA  
Mr Daniel McCrossan MLA

# Report on Legislative Consent Memorandum on The Pensions (Special Rules for End of Life) Bill 2024

## Background

4. The Bill was introduced to the House of Commons on 6 December 2023 as a Private Members Bill, sponsored by Laurence Robertson. It proposes to amend pensions law to change the life expectancy criteria for Pension Protection Fund (PPF) terminal illness payments, and both annual and initial payments made under the Financial Assistance Scheme (FAS) Regulations 2005.
5. The Bill amends the definition of terminal illness to be in line with amendment made in 2022 by the Social Security (Special Rules for End of Life) Act, which extended the definition to include people with a life expectancy of up to twelve months – instead of six months. It would also make provision for annual payments in the case of ill health where an individual has between 12 months and 5 years' life expectancy (FAS Regulations only).
6. It is a single topic, 3-clause Bill that will amend the PPF legislation and the FAS regulations so that people with a life expectancy of up to 12 months can receive terminal illness payments.
7. The Pension Protection Fund which was established by the Pensions Act 2004 operates on a UK-wide basis. It pays compensation to members of eligible defined benefit (DB) 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 at the level of PPF compensation. Schedule 7 to the Pensions Act 2004 and corresponding provision in Schedule 6 to the Pensions (Northern Ireland) Order 2005 set out the pension compensation provisions.
8. PPF members can claim their compensation payments before their scheme's normal pension age. In general, a claim can be made from age 55 which is the minimum normal pension age. Where compensation is paid before the scheme's normal pension age, it is subject to an actuarial reduction, as the compensation is expected to be paid for a longer time. However, currently a member who is not yet entitled to receive compensation may be able to make an application to the PPF Board for a terminal illness lump sum payment if their death can reasonably be expected within 6 months, as a consequence of a progressive disease.
9. 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. The Bill also amends the Financial Assistance Scheme Regulations 2005 to ensure consistency across the PPF and Financial Assistance Scheme landscape.
10. 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.

Report on Legislative Consent Memorandum on The Pensions (Special Rules for End of Life) Bill 2024

11. 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.
12. 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 being twelve months instead of six. The amendments aim to simplify and clarify how these provisions operate.
13. Clauses 1(3) and 1(4) of the Bill will 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.
14. Clause 2(2) extends the relevant parts of clause 1 to Northern Ireland.
15. Clause 2(3) extends clause 3 – the short title of the Bill – to Northern Ireland.
16. Clauses 2(5), 2(8) and 2(10) also apply to Northern Ireland.

**Evidence submitted to the Committee**

17. Due to the very short time available to the Committee to scrutinise this legislation, the Committee wrote directly to Marie Curie to seek its views.
18. The evidence submitted to the Committee is included at Appendix 1.
19. Marie Curie state that, whilst the narrow scope of this Bill means the change is likely to impact a small number of people with a terminal illness, more generally the focus on private pension schemes and their response to members with a terminal illness is welcome. The financial support provided by pay-outs from private pensions or life insurance policies can be critical for working-age people who are diagnosed with terminal illnesses.
20. Marie Curie and the Motor Neurone Disease Association campaigned passionately to improve access to social security payments for those with a terminal illness through the 'Scrap 6 Months' campaign which led to the Social Security (Special Rules for End of Life) Act 2022. The definition change for terminal illness is a step in the right direction and they welcome its adoption within the PPF legislation and the FAS regulations. Furthermore, Marie Curie would welcome universal application of this new definition across all private pension schemes.
21. However, Marie Curie feel that, as emphasised by its 'Scrap 6 months' campaign, an arbitrary timeframe around expected life expectancy does not address the broader issue around the unpredictable nature of many terminal conditions which can make the 'burden of proof' required by schemes with respect to life-expectancy difficult or impossible to meet. This can leave dying people unable to access the financial support they need until it is too late, plunging them and their loved ones into a position of poverty at a time of extreme difficulty. The preference would be for pension and life insurance providers to ensure that all working age people who become terminally ill can easily access the financial support they need from their policies, regardless of prognosis.

### **Consideration of the Legislative Consent Memorandum by the Committee**

22. The Committee was briefed by Departmental officials at its meeting on 14 March 2024.
23. Members were informed that The Pensions (Special Rules for End of Life) Bill currently before Parliament includes provision relating to devolved matters. It was introduced at Westminster as a Private Members Bill on 06 December 2023. The Bill will amend existing legislation covering both the Pension Protection Fund and Financial Assistance Scheme definition of terminal illness, so that people with a life expectancy of up to twelve months (instead of six months) can receive terminal illness payments.
24. The Departmental officials stated that, where Parliament intends to legislate on a transferred matter, it is normal practice for the relevant GB Minister to seek the agreement of the devolved administration. In line with Standing Order 42A approval for a Legislative Consent Motion is therefore required.
25. The Committee was informed that Pension Protection Fund (PPF) 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.
26. 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 then, 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.
27. Currently, terminal illness is 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.
28. These eligibility criteria were previously 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.
29. The provisions which deal with a transferred matter relate to the definition of terminal illness in the Pensions (Northern Ireland) Order 2005 and Pensions (No.2) Act (Northern Ireland) 2008 that allow for the definition being twelve months instead of six.

Report on Legislative Consent Memorandum on The Pensions (Special Rules for End of Life) Bill 2024

30. Clauses 1(3) and 1(4) of the Bill 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.
31. Clause 2(2) extends the relevant parts of clause 1 to Northern Ireland.
32. Clause 2(3) extends clause 3 – the short title of the Bill – to Northern Ireland.
33. Clauses 2(5), 2(8) and 2(10) also apply to Northern Ireland.
34. Although pensions are a devolved matter, in general pensions policy and legislation in Northern Ireland maintain parity with corresponding pension provision in England, Scotland and Wales, in line with section 87 of the Northern Ireland Act 1998.
35. The Departmental officials informed Members that, if it is agreed that provisions in the Bill extend to Northern Ireland, this will allow these important provisions to be enacted by pension schemes across the jurisdictions at the same time.
36. However, 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. This would mean people in Northern Ireland would not benefit from the extension of terminally ill definition to 12 months at the same time as those in the rest of the United Kingdom.
37. It is anticipated that the Bill should have completed its passage through the House of Commons as early as April 2024. The Departmental officials stated that it would, therefore, in this instance be beneficial to agree that the relevant provisions in the Bill extend to Northern Ireland.
38. Departmental officials confirmed that 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 Northern Ireland are United Kingdom-wide schemes. Therefore, it is highly desirable that the same provisions are in place in Northern Ireland to ensure parity across both jurisdictions.
39. As this is a Private Members Bill, the Secretary of State is not required to make a statement under Section 19 of the Human Rights Act 1998. However, it is the view of Westminster Government that the Bill is compatible with the European Convention on Human Rights.
40. 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. The proposed changes are largely beneficial for scheme members in that the terminal illness definition has changed from six months to twelve.
41. The Committee was informed that it was not originally anticipated that the Bill would require a Legislative Consent Motion because it was introduced during a period of interregnum. The Minister then received a letter on 22 February 2024,



## Report on Legislative Consent Memorandum on The Pensions (Special Rules for End of Life) Bill 2024

from the Secretary of State of Work and Pensions, requesting a Legislative Consent Motion in respect of the Northern Ireland provisions within the Bill.

42. Whilst Committee is of the opinion that it would prefer to see legislation originating in the Assembly, it accepts, in this case, that it is preferable that any changes are made across all jurisdictions at the same time to ensure that people in Northern Ireland would benefit from the extension of terminally ill definition to 12 months at the same time as those in the rest of the United Kingdom.
43. At its meeting on 21 March 2024, the Committee considered the draft report and a further email from Marie Curie calling for an amendment to the Bill to extend it all 'Pension Protection Fund' pension schemes across the UK and not just those that become insolvent. Expansion of the Bill in this way would align it with the DWP guidance for pension fund providers which is 12 months and would ensure all schemes adhere to this good practice.
44. Members agreed to acknowledge Marie Curie's call for an amendment and to state that, whilst the Committee was made aware of the requested amendment, it did not form part of the scope of the draft memorandum in relation to which consent was being sought.
45. The Committee is therefore supportive of the draft Legislative Consent Motion.

Report on Legislative Consent Memorandum on The Pensions (Special Rules for  
End of Life) Bill 2024

**Links to Appendices**

**Appendix 1: Written submission**

[View written submission from Marie Curie and further email received in relation to the report](#)

**Appendix 2: Minutes of Evidence**

[View Minutes of Evidence from evidence sessions related to the report](#)