Committee for Finance and Personnel

Report on the Legislative Consent Motion: Pension Schemes Bill

(Public Service Defined Benefit Schemes)

Wednesday 17 December 2014 **NIA 218/11-16**

Contents

List of Abbreviations and Acronyms

DFP	Department of Finance and Personnel
ICTU-NIC	Irish Congress of Trade Unions – Northern Ireland Committee
LCM	Legislative Consent Motion
LGPS	Local Government Pension Scheme
TUS	Trade Union Side

Committee Remit, Powers and Membership

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 (Chairperson)[1]
Mr Dominic Bradley (Deputy Chairperson)
Mrs Judith Cochrane
Mr Leslie Cree MBE
Ms Michaela Boyle[2]
Mr Paul Girvan
Mr John McCallister[3] [4]
Mr Ian McCrea[5] [6]
Mr Maírtín Ó Muilleoir[7] [8]
Mr Adrian McQuillan
Mr Peter Weir[9]

[1] Mr Daithí McKay replaced Mr Conor Murphy MP with effect from 2 July 2012
[2] Ms Michaela Boyle replaced Ms Megan Fearon with effect from 2 December 2013
[3] Mr Roy Beggs replaced Mr Ross Hussey with effect from 23 April 2012
[4] Mr John McCallister replaced Mr Roy Beggs with effect from 15 October 2012
[5] Mr Ian McCrea replaced Mr David McIlveen with effect from 16 September 2013
[6] Mr David McIlveen replaced Mr David Hilditch with effect from 1 October 2012
[7] Mr Raymond McCartney replaced Mr Mitchel McLaughlin with effect from 6 October 2014
[8] Mr Maírtín Ó Muilleoir replaced Mr Raymond McCartney with effect from 10 November 2014
[9] Mr Peter Weir replaced Mr William Humphrey with effect from 1 October 2012

Background

1. At Budget 2014 the UK Chancellor of the Exchequer announced that there is to be greater flexibility in the way that members of defined contribution pension schemes can access their pension pot. In essence, the pension scheme members will be less constrained to purchase an annuity than is currently the case and will have more freedom to choose, in light of their personal circumstances, whether to purchase an annuity, draw down their savings as a lump sum, or keep their pension invested. These flexibilities are due to be introduced from April 2015.

2. A defined contribution scheme builds a fund up which is used to provide an income in retirement but is dependent other factors including the amount a member contributes and the performance of the fund, whereas defined benefit schemes promise a specific income.

3. Under current rules, it is possible for a member of a public service defined benefit scheme to transfer their rights to a defined contribution scheme. After the introduction of the flexibilities in April 2015, members exercising this choice would then be permitted to access their pension pots flexibly under the new rules. Funded public service pension schemes have a fund of assets which can support the payment of transfer values. However, unfunded public service pension schemes have no such fund of assets.

4. The main unfunded schemes affected by the Legislative Consent Motion (LCM) in Northern Ireland include civil servants, police officers, firefighters, teachers and Health workers, whilst the scheme for local government employees is the main funded scheme. These schemes are defined benefit schemes.

5. The Pension Schemes Bill 2014-15[10] was introduced at Westminster Parliament on 26 June 2014 and will amend the Pension Schemes Act 1993 to prevent transfers from unfunded public service pension schemes to defined contribution schemes (transfers from funded public service schemes and private sector schemes will continue to be permitted).

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[10] Pension Schemes Bill 2014/15

Committee Consideration

6. In correspondence received from the Department of Finance and Personnel (DFP) on 21 October 2014, the Committee noted that the Minister of Finance and Personnel had sought approval from the Executive for an LCM to extend the provisions in the Pension Schemes Bill to Northern Ireland. On 27 November 2014, the Minister formally laid a Legislative Consent Memorandum in the Assembly.

7. The Committee received an initial briefing from departmental officials at its meeting on 5 November 2014. Members were advised that Treasury estimated that, at a UK level, there would a cost to the public purse of some £200 million in the event that 1% of those reaching the retirement age in the public service pension schemes elected to transfer their rights out from their unfunded defined benefit scheme to a defined contribution scheme in order to take advantage of the new flexibilities. In this regard , the Committee questioned officials to establish what forecasting had been undertaken to establish the equivalent cost in Northern Ireland and, given that the proposals would essentially restrict the freedom of choice for the affected scheme members, what level of engagement DFP had undertaken with Trade Union Side (TUS).[11]

8. In response, the DFP officials stated that the potential costs at a local level had yet to be estimated but, through engagement to date, the understanding was that TUS agrees in principle with safeguarding existing schemes. This was on the basis that, without these safeguards, there could a detrimental impact for members in the event of a run on the schemes, which could affect the cost-control mechanisms and thus raise the possibility of higher contribution rates.

9. Furthermore, in noting DFP's assertion that the LCM is in the interests of scheme members in Northern Ireland, the Committee questioned officials to establish how the Department could justify this in view of a restriction being imposed on scheme members benefitting from the flexibilities. In response, the departmental officials explained that, when calculating a transfer value in a funded scheme, there would be a deduction from the overall value of the scheme which could lead to a severe deficit, which subsequently may require funding by the taxpayer and/or scheme members in the event of the cost controls being breached. Officials also advised that the Department had been liaising with Treasury on its findings on the equality implications, which will supplement the equality considerations that will be undertaken by DFP.

10. To further inform its consideration of the issues, the Committee wrote to the Irish Congress of Trade Unions – Northern Ireland Committee (ICTU-NIC) for its views on the proposals contained within the LCM.

[11] Official Report - 5 November 2014

11. In correspondence received from the Chairperson of ICTU-NIC's Public Service Pensions Group, the Committee noted that TUS was supportive of the provisions and the use of the LCM mechanism in this regard, explaining that the *'most important reason to support the legislative consent proposal is to protect the individual scheme member'*[12].

12. A further point highlighted by ICTU-NIC was that the Westminster legislation should cover all public service pension schemes including funded schemes, in particular the Local Government Pension Scheme (LGPS) and Northern Ireland Government Officers Superannuation Committee. Therefore, at its meeting on 19 November 2014, the Committee sought clarification from departmental officials on this issue. In response, the officials advised that, whilst applying to all unfunded schemes, the legislative provisions do not extend to funded schemes since they operate on a separate basis.[13] However, as the Committee did not have the opportunity to further explore the rationale for the provisions not covering all public service pension schemes in Northern Ireland, including the LGPS, it would be helpful if the Minister can provide further explanation on this point during the debate on the LCM.

Recommendation on the LCM

13. In conclusion and having considered the evidence, **the Committee for Finance and Personnel supports the Minister of Finance and Personnel in seeking the Assembly's agreement "*That this Assembly endorses the principle of the extension to Northern Ireland of the provisions of the Pension Schemes Bill dealing with restrictions on transfers out of public service defined benefits schemes and reduction of cash equivalents in relation to funded public service defined benefits schemes, as contained in clauses [clause numbers to be added following reprinting of the Bill] of the Bill as brought from the House of Commons to the Lords.*"**

[12] Appendix 3 – Correspondence from ICTU-NIC
[13] Official Report - 19 November 2014

Appendix 1

Legislative Consent Memorandum

LEGISLATIVE CONSENT MEMORANDUM

PENSION SCHEMES BILL

(Public Service Defined Benefit Schemes)

Draft Legislative Consent Motion

1. The draft motion, which will be tabled by the Minister of Finance and Personnel, is:

> ***"That this Assembly endorses the principle of the extension to Northern Ireland of the provisions of the Pension Schemes Bill dealing with restrictions on transfers out of public service defined benefits schemes and reduction of cash equivalents in relation to funded public service defined benefits schemes, as contained in clauses [clause numbers to be added following reprinting of the Bill] of the Bill as brought from the House of Commons to the Lords.***

Background

2. This memorandum has been laid before the Assembly by the Minister of Finance and Personnel under Standing Order 42A(2). The Pension Schemes Bill was introduced in the House of Commons on 26 June 2014. The latest version of the Bill can be found at:

   http://services.parliament.uk/bills/2014-15/pensionschemes.html

Summary of the Bill and its policy objectives

3. At Budget 2014, the Chancellor announced reforms to private pensions, giving savers greater flexibility in how and when they access their defined contributions pension pots. The new flexibilities will also have implications for those with a defined benefits pension pot, and HM Treasury consulted on how these flexibilities, including individuals' rights to a transfer, should be managed.[14] As the majority of public service defined benefits schemes operate on an unfunded basis, allowing transfers out of these schemes would expose the Exchequer to significant risks. Therefore, the Bill introduces a power for the Department of Finance and Personnel to prevent

[14] HM Treasury, *Freedom and Choices in pensions* (*https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/294795/freedom_and_choice_in_pensions_web_210314.pdf*)

transfers out of public service defined benefits pension schemes, except to other defined benefits schemes. (It should be noted that these terms, 'defined benefits' and 'defined contributions', have specific meanings set out in tax legislation which are not the same as those used in this Bill).

4. The Bill also makes provision for the introduction of a funded public service pension scheme safeguard. In prescribed circumstances, Ministers will be able to 'switch on' reduced Cash Equivalent Transfer Values from funded public service pension schemes.

Provisions which deal with a Devolution Matter

5. As public service pension arrangements for Northern Ireland is a transferred matter, there is scope to legislate for this through a Northern Ireland Assembly Bill. However, due to time constraints, such a Bill would not receive Royal Assent by April 2015.

6. With the introduction of these new flexibilities from April 2015 it will be possible for a member of a public service defined benefit scheme to transfer their pension rights to a defined contribution scheme. After the introduction of the flexibilities in April 2015, members exercising this choice would then be permitted to access their pension pots flexibly under the new rules. Funded public service pension schemes have a fund of assets which can support the payment of transfer values. However, unfunded public service pension schemes have no such fund of assets, and could be particularly exposed.

7. The Coalition Government has therefore decided that, after the introduction of the new flexibilities in April 2015, the ability to transfer in this manner should continue to be available to members of funded public service pension schemes (as well as private sector schemes), subject to the safeguards for CETV reduction, but not to members in unfunded schemes which include Civil Service, Police, Fire, Teachers and Health. The Local Government Pension Scheme (Northern Ireland) is the only funded scheme amongst the main defined benefit public service schemes.

8. The policy rationale is the need to avoid a potentially destabilising burden on the public purse that could arise if a significant proportion of funded, public service pension scheme members were to seek to transfer the value of their accrued rights out of their scheme so as to take advantage of new flexibilities for pension drawdown in a defined contribution scheme. Unfunded public service pension schemes obviously do not have assets that could be liquidated to meet these costs; instead the costs would fall directly upon the public purse.

Reasons for making the Provisions

9. As the risk applies equally to tax payers across the whole of the United Kingdom, the transfer ban should apply equally to members in unfunded, public service pension schemes in Northern Ireland as in the rest of the United Kingdom.

10. The Legislative Consent Motion being tabled in the Assembly seeks agreement to Westminster legislating for the implementation of safeguards to protect public service pension schemes.

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

11. 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. Accordingly, the normal approach for the Northern Ireland schemes is to implement changes in pension policy decisions taken at United Kingdom level, and in line with change made to the equivalent schemes in Great Britain rather than to develop or formulate policy directly.

12. An Assembly Bill would contain virtually identical provisions to those carried in the Westminster Bill. An Assembly Bill, to give effect to these reforms, could not be introduced in the Assembly until the Westminster Bill achieves Royal Assent and its content is finalised. There is a real risk that, with the introduction of the new flexibilities from April 2015, the timetable does not allow sufficient time to draft and consult on the secondary legislation required. The use of a Legislative Consent Motion is the most effective vehicle to offer the ability to be part of a United Kingdom wide policy.

Consultation

13. In November 2013, the Government published a consultation paper, *Reshaping workplace pensions for future generations*, which outlined broad proposals to enable greater innovation in risk sharing in private pension arrangements. Responses that were received during the consultation period were considered in the Government response paper published in June 2014.

14. The Department of Finance and Personnel has consulted with public sector trade unions on these relevant provisions for restriction of transfers from defined benefit public service pension schemes at the Collective Consultation Working Group which is the recognised interdepartmental forum for consultation with TUS on public service pension reform issues.

Human Rights and Equality

15. An impact assessment on the Bill has been undertaken by the Department for Work and Pensions. As the relevant Clauses, for which the Minister of Finance and Personnel is laying the memorandum, were submitted as an amendment to the Bill, these Clauses were not included in the impact assessment. The Department of Finance and Personnel has conducted a Policy Screening exercise. No Convention rights are engaged. The Screening exercise concluded that an equality impact assessment is not required. The Department's screening document is available at:

http://www.dfpni.gov.uk/publications-foi/publications-browse/publication-scheme-what-are-our-priorities-how-are-we-doing/publication-scheme-what-are-our-priorities-impact-assessments.htm

Financial Implications

16. While increased freedom in pensions is to be welcomed it must be proportionate and managed effectively, especially where there are impacts for unfunded, public service pension schemes. These schemes do not have a fund of assets which can be drawn on for the payment of their members' pension liabilities. The cost of paying pensions in these unfunded schemes and the cost of transferring members' pension entitlements to another scheme, where a member opts to do so, falls directly upon scheme members, the taxpayer and the public purse.

17. Permitting these transfers would risk exposing those schemes, their members, and the public purse to a potentially destabilising financial burden. This would be especially so if significant numbers of members were to seek to transfer their public service pension entitlement to a defined contribution arrangement to get this lump sum option.

18. Consideration has also been given to the impact a high volume of transfers from funded schemes to defined contribution schemes may have following the introduction of the flexibilities from April 2015. Although funded schemes have a fund from which liabilities can be drawn, there is a very real possibility of a significant increase in transfer traffic from April 2015.

19. As a further financial safeguard, to protect the public purse, the Bill makes provision for powers to 'switch on' the ability to reduce the value of a cash equivalent transfer in certain circumstances. This is only in the event of, either as a direct result of increased transfer volumes or in combination of other factors, there is an increased risk of tax payer intervention to support the funded scheme, or a risk that the necessary intervention is significantly greater than it would otherwise have been.

Summary of Regulatory Impact

20. The provisions of the Bill dealing with a devolution issue have no impact on employment, and there is no cost to business, social economy enterprises or the voluntary sector.

Engagement to date with the Committee for Finance and Personnel

21. To date, the Finance and Personnel Committee has received briefing sessions from Departmental officials on Freedom and Choice in Pensions at the Committee's meetings on 5 and 19 November. The Department also provided the Committee with written briefing.

Conclusion

25. In the interests of the timely introduction here of the Freedom and Choice in Pensions policy, it is the view of the Minister of Finance and Personnel that public service pension schemes in Northern Ireland should be afforded the same level of protection as elsewhere in the United Kingdom.

Department of Finance and Personnel
27 November 2014

Appendix 2

DFP Papers

Assembly Section

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Department of
Finance and
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Mr Shane McAteer
Clerk
Committee for Finance and Personnel
Room 419
Parliament Buildings
Stormont

Ref MISC/210/11-15
21 October 2014

Dear Shane,

WESTMINSTER PENSION SCHEMES BILL - LEGISLATIVE CONSENT MOTION FOR POWERS TO PREVENT TRANSFERS OUT OF UNFUNDED, PUBLIC SERVICE DEFINED BENEFIT PENSION SCHEMES TO DEFINED CONTRIBUTION PENSION SCHEMES.

I am writing to update the Committee that Minister Simon Hamilton has sought approval from the Northern Ireland Executive for a Legislative Consent Motion to extend provisions in the Westminster Pension Schemes Bill to Northern Ireland. These provisions will prevent transfers out of unfunded, defined benefit, public service pension schemes to defined contribution pension schemes.

Background

At Budget 2014, the Chancellor announced that there is to be greater flexibility in the way that members of defined contribution pension schemes can access their pension pot. In essence, members will be less constrained to purchase an annuity than is currently the case and will have more freedom to choose, in light of their personal circumstances, whether to purchase an annuity, draw down their savings as a lump sum, or keep their pension invested. These flexibilities are due to be introduced from April 2015.

Under the current rules, it is possible for a member of a public service defined benefit scheme to transfer their rights to a defined contribution scheme. After the introduction of the flexibilities in April 2015, members exercising this choice would then be permitted to access their pension pots flexibly under the new rules.

Funded public service pension schemes have a fund of assets which can support the payment of transfer values. However, unfunded public service pension schemes have no such fund of assets.

The main unfunded schemes include Civil Service, Police, Fire, Teachers and Health, whilst local government is the main funded scheme. These schemes are defined benefit schemes.

The Pension Schemes Bill, introduced in the Westminster Parliament on 26 June, will amend the Pension Schemes Act 1993 to prevent transfers from unfunded public service pension schemes to defined contribution schemes (transfers from funded public service schemes and private sector schemes will continue to be permitted). If a Legislative Consent Motion is approved, the Bill will extend to amend the corresponding Northern Ireland legislation, the Pension Schemes Act (Northern Ireland) 1993 with the same effect.

Policy Rationale

The policy rationale is the need to avoid a potentially destabilising burden on the public purse that could arise if a significant proportion of public service pension scheme members were to seek to transfer the value of their accrued rights out of their scheme so as to take advantage of the new flexibilities in a DC scheme. Unfunded public service pension schemes obviously do not have assets that could be liquidated to meet these costs; instead the costs would fall directly upon the public purse.

There is a real risk to public finances if this legislation is not approved by April 2015. HM Treasury and HMRC estimate that net costs for the Exchequer could reach in the order of £200m per year across the United Kingdom should 1% of those reaching retirement age in the public service pension schemes elect to transfer their rights out of their unfunded, defined benefit scheme to a defined contribution scheme to access their pension savings flexibly.

Legislative Consent Motion

As the risk applies equally across unfunded public service schemes, the Department is minded that this transfer ban should apply equally to members in unfunded public service pension schemes in Northern Ireland as in the rest of the United Kingdom. Obviously, as this deals with a devolved issue, there is scope to legislate for this ban through a Northern Ireland Assembly Bill. However, the Department considers that, due to time constraints, such a Bill would not receive Royal Assent by April 2015. Should such a scenario arise, this would offer an opportunity for members of an unfunded public service pension defined benefit scheme to transfer to a defined contribution scheme and then proceed to access their pension savings flexibly. This would have a direct effect on the public purse at a time when public funding is already too stretched.

The Department believes the scope of this legislation to be very limited, and believe that this is a prudent measure to take to protect both the integrity of unfunded, defined benefit public service pension schemes, and the interest of scheme members here in Northern Ireland.

For completeness, I have outlined below the unfunded public service pension schemes in Northern Ireland and the Department with responsibility.

Pension Scheme	Department
Northern Ireland Teachers' Pension Scheme	Department of Education
Principal Civil Service Pension Scheme (Northern Ireland)	Department of Finance and Personnel
Health and Social Care Pension Scheme Firefighters Pension Scheme (Northern Ireland)	Department of Health, Social Service and Public Safety
Police Service of Northern Ireland	Department of Justice

In Westminster, the Bill has been committed to a Public Bill Committee. Proceedings in the Public Bill Committee are scheduled to conclude on 6 November 2014. It is anticipated that the Report Stage will take place on 17 November. Normally, a decision by the Assembly is required before Report Stage of the Bill. Therefore, the Department is keen to engage now with the Committee, in anticipation of Executive agreement, to ensure that the legislation is in place from April 2015.

The Department has now received a draft of the relevant amendment clauses in the House of Commons format. This is attached for the Committee's reference. I would appreciate if this could be treated in confidence given that at time of writing the clauses have not yet been formally tabled at Westminster. If there are any further adjustments to the draft clauses, the Department will update the Committee. The Department however, does not envisage any further substantive changes at this stage in respect of the core provisions or its effects.

As the Committee will be aware neither the Legislative Consent Memorandum (nor the Motion in due course) would normally be laid procedurally until after the clause has been tabled in the Commons.

Given the tight timescales that will occur, there may be a need to sequence these events quite closely to facilitate the laying of the Legislative Consent Memorandum and then the Legislative Consent Motion in due course. I will keep close contact with the Committee so as to facilitate its engagement on this matter.

In terms of forward timescales, Parliamentary Counsel at Westminster has advised that the relevant clauses will be laid before conclusion of Committee Stage in the House of Commons. This is currently expected on 6 November. I attach the link which details the Bills progress below:-

http://services.parliament.uk/bills/2014-15/pensionschemes.html

Departmental Solicitor's Office has advised that there is legal competence in amending the Pension Schemes Act (Northern Ireland) 1993 to introduce the changes as outlined via a LCM

Yours sincerely

GEAROID CASSIDY
Departmental Assembly Liaison Officer

Correspondence from the Irish Congress of Trade Unions – Northern Ireland Committee

YOUR REF

OUR REF

nipsa

The Leading Public Service Union

Brian Campfield General Secretary

Mr S McAteer
NI Assembly
DFP Comm Clerk
Room 144
Parliament Buildings
Stormont
BELFAST

12 November 2014

Dear Shane

RE: LEGISLATIVE CONSENT MOTION (LCM) POWERS TO PREVENT TRANSFERS OUT OF UNFUNDED PUBLIC SERVICE DEFINED BENEFIT PENSION SCHEMES TO DEFINED CONTRIBUTION PENSION SCHEMES

I refer to your correspondence of 6 November 2014 addressed to my colleague John O'Farrell. I am letting you have this response on behalf of NIC ICTU in my capacity as Chairperson of the NIC ICTU Public Service Pensions Group.

As referred to in the correspondence there have been exchanges with DFP and sponsoring Departments of Public Service Pension Schemes via the CCWG on Public Service Pensions.

The trade unions are supportive of the legislation to prevent the switch from Defined Benefit (DB) to Defined Contribution (DC) Scheme. On this occasion we would also agree to the use of the legislative consent mechanism.

I would however wish to highlight a number of points:-

- Our concern relates to the Scheme member and the potential vunerability of their future if the loophole is not closed. A transfer from DB to DC and then accessing their pension pot via cash release(s) will damage their future security in retirement.

- The basis of the correspondence to the Committee of 21 October from the DFP Departmental Assembly Liaison Officer puts undue attention on scheme/public purse impact. Whilst this is a factor, as pointed out above the most important reason to support the legislative consent proposal is to protect the individual scheme member.

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- The Trade Unions would wish to see the Westminster legislation go further and should it not do so we would wish the Assembly to pick up this point. We would wish the legislation to cover all public sector pension schemes including the funded schemes; in particular the LGPS/NILGOSC Scheme. We do so to ensure equitable protection of all public servants future pension provision. The DB to DC switch and then accessing cash pots is not dissimilar from the pension liberation scams which leave individuals in retirement with little or no ongoing occupational pensions; and

- The focus on the ability of the scheme to release cash assets vis-à-vis the unfunded schemes is also erroneous as it still represents an adverse impact on the totality of the scheme's funding position.

If you wish to discuss further please feel free to contact me.

Yours sincerely

BUMPER GRAHAM
NIC ICTU Chairperson
Public Service Pensions Group

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