

The Council of Ministers Response to the Consultation upon the Draft Public Sector Pensions Bill

1. Introduction

The Superannuation Act 1984 ('the Act') provides the statutory basis for the establishment of the Isle of Man's public sector pension schemes. It enables schemes to be created for particular groups of public servants. Several pension schemes have been created under the powers available under the Act, for example the Civil Service Commission has created the NHS Scheme, the Department of Education is currently responsible for the teachers' scheme and the Department of Home Affairs is has made the scheme for firefighters.

In 2008 the Council of Ministers instigated a review of this Act, which had been on the Government's legislative programme since 2005.

The Council of Ministers proposed to modernise the Act for two reasons:

- a) limitations in the Act have come to light, making reform essential for the continuing management of the current pension arrangements; and
- b) the pensions environment has changed since the legislation was made in 1984, making it desirable to update the Act to bring it into line with current standards of good practice.

Following consultation, The Council of Ministers prepared a draft Public Sector Pensions Bill. This draft Bill includes the following:

- The power to make, amend and revoke schemes and the bodies responsible for the same;
- Flexibility when making and amending schemes;
- Tynwald to continue to approve the making, amending and revocation of schemes;
- Establishment of a new Statutory Authority to oversee public service pensions in the Island , setting out its responsibilities;
- Clarification of the bodies responsible for the maintenance and administration of schemes and the ability to delegate the same;
- Clarity regarding both funding and transfer arrangements for schemes;
- A new internal disputes process; and
- Appropriate Transitional Provisions

The Council of Ministers embarked upon a further period of consultation upon its draft Bill, beginning on 11 November 2009 and ending at the end of January 2010.

There were 22 responses to the consultation, which were broadly from Trade Union and other representative bodies, employing bodies and local authorities. A full list of the respondents is at **Annex A**. The Council of Ministers is very grateful to all who contributed to the consultation.

2. Responses

The main points raised by this consultation are set out below, along with the Council of Ministers responses.

Of the responses, eight either noted the draft Bill or offered no comment in relation to it, seven offered support for the Bill, but offered some points for consideration and the remaining seven raised either concerns or a note of caution on a number of points. The responses fell into five broad areas which are highlighted under the headings below.

Analogy to UK Schemes

Recognition and in some cases support was given for the breaking of the direct analogy with the UK given that the Bill will require that all future pension scheme changes will require Tynwald approval:

“The Commission notes that by requiring all future scheme changes to be approved by Tynwald, the automatic analogy with UK schemes is broken.” (The Civil Service Commission).

“The breaking of the link with the UK, whilst necessary and unavoidable provides for vital autonomy and flexibility for manxification of schemes.” (Prospect/GOA).

However, some opposition was raised for the breaking of the automatic link with the UK:

“It is now clear that the Council of Ministers is planning to sever the “by-analogy” link with the UK Scheme and to have the ability to make such changes retrospective.....” (Isle of Man Medical Society/BMA)

“...the severing of the by-analogy link with the UK Scheme would present recruitment and retention difficulties for the Isle of Man NHS” (Isle of Man Medical Society/BMA)

Council Of Ministers Response

There are 10 schemes that have a direct by-analogy link to the equivalent UK scheme, and these are all schemes based upon the UK Principal Civil Service Pension Scheme. Over time, the provisions contained within those schemes have changed without any account being taken of the Isle of Man’s workforce and needs. Consequently, the Council of Ministers consider that it is fundamental that any automatic link must be broken, so that the Isle of Man Government and its workforce have the opportunity of considering whether changes emanating from the UK are appropriate for the Isle of Man.

For all other schemes, Tynwald approval is required before any changes can be made. Although a large number of schemes maintain parity with the corresponding UK Scheme, there is no automatic by-analogy link (for example, the NHS by analogy arrangements were revoked by the Isle of Man National Health Superannuation Scheme 1997). Therefore, the Isle of Man has the ability to consider and amend, if necessary, the UK Scheme – this was done in relation to the National Health Superannuation and National Health Pension

Schemes 2008, where the UK legislation was amended to take account of the Isle of Man position.

The provisions set out in the draft scheme will therefore remain.

Establishment of a new Pensions Authority

Of those who commented upon the establishment of a new Statutory Authority, there was broad support for its introduction:

"The Commission also notes and fully supports that, through the establishment of a Public Sector Pensions Authority, the management of public sector schemes will fall under the remit of a dedicated and suitably qualified Authority who will be able to focus upon public sector schemes" (The Civil Service Commission)

"... it makes sense to place these important functions under the remit of a dedicated and suitably qualified Chief Executive, who in turn will be responsible to an authority with sole responsibility for the management, administration and maintenance of public service pension schemes" (The Personnel Office)

" Independence of Pensions Statutory Authority – we see this as a positive step forward and welcome this development" (Prospect GOA)

"The Department welcomes the proposal to have a single body responsible for all public-sector pension schemes (including local authorities)..". (The Department of Local Government and the Environment).

Council of Ministers response

The Council of Ministers is pleased that this element of the Bill is supported, especially since it considers that the setting up of a new and dedicated Statutory Pensions Authority is necessary for the future governance, management and administration of public sector pensions, in particular in a world where greater governance and scrutiny is being introduced across all pension provision in the private and public sector. Recent announcements made by the UK authorities' show that the focus on governance and costs is set to continue into the future.

Makeup and Remit of the New Authority

Whilst there is broad support for the new Statutory Authority, there were some points which a number of the respondents felt required clarification, broadly around what level of responsibility would fall to the new Authority, what would happen to funds currently in place for the Local Government and Post Office Schemes, and concern about the makeup of the Authority:

"The board is also concerned that the new Bill appears to grant significant powers to the proposed body in respect of the Isle of Man Post Office Superannuation Scheme when it is not involved in administering, managing or maintaining the scheme" (Isle of Man Post Office)

"By Including the Post Office Scheme in the remit of the new body there would be a transfer of control over policy in respect of a fundamental element of the Post Office's cost base. The board assumes this is not the intention of the proposed Bill..." (Isle of Man Post Office)

"Must represent all employee groups - ...the number of employee representatives proposed makes it impossible for the widest number of employee groups to be represented." (Prospect/GOA)

"Appointments process to the PSPA – this needs a lot more definition up front." (Prospect/GOA)

"The provision in clause 5 (7) (a) and (b) in relation to the establishment of a PSPA seem particularly wide ranging and that it might be more beneficial to make these more specific either in the primary legislation or in appropriate secondary legislation" (Department of Tourism and Leisure)

"The Bill does not say whether there will be a single authority to receive contributions, pay benefits and administer funds. The Department feels that such gaps in responsibility will lead to general confusion unless these points are clarified." (The Department of Local Government and the Environment)

"The financing of Local Government Pensions could certainly be an issue, given the different revenue bases of central and local Government. (The Department of Local Government and the Environment)

"Given the financial nature of Pension Schemes , The Treasury's role in the proposed PSPA set up would appear to be lacking" (Individual scheme member)

"On certain aspects of Pensions Management and Administration, such as investments or funding, the taking of appropriate professional advice should be mandatory" (Individual Scheme Member)

The "response to a previous consultation exercise appears to have been taken into account and the Committee has no further comment except to suggest that Membership of the proposed Public Sector Pensions Authority should include one representative of the Isle of Man Local Government Superannuation Scheme." (Borough of Douglas)

"Reference was made to the Local Authorities Pension Scheme which does have a separate fund. It was stated that this fund must be retained for the sole use of local authority employees who retire." (Peel Town Commissioners)

Council of Ministers response

The Council of Ministers wishes to rationalise the Governance, Management and Administration of the Isle of Man Public Sector Pension Schemes. However, in relation to

those Public Sector Schemes that currently have Trustee Boards and dedicated investment funds, the Council of Ministers consider that these should continue in their present form in terms of funding/investments, governance, administration and management, and should only move to fall under the remit of the new Authority if either Tynwald believe that it is in the best interests of the Isle of Man Public Sector, or those authorities responsible for the schemes wish to pass the management of such schemes to the new Authority. In addition, before any such change happened, it would need to be following full consultation and more importantly, with the approval of Tynwald.

As a consequence, the Council of Ministers proposes to make its intentions more explicit in the revised draft Bill.

In relation to the makeup, appointment and specific functions of the new proposed Statutory Authority, the Council of Ministers is aware that the Bill as drafted gives a broad base from which to work, and is very much enabling legislation.

The Council of Ministers does not wish to have the detailed specifics of the Authority set out in Primary legislation, but anticipates that these will be set out in appropriate secondary legislation, which will be easier to amend in light of experience. Such secondary legislation will be the subject of a consultation process in its own right.

However, the Council of Ministers is mindful of the consultation feedback around the appointment or members of the new Authority and also the comments expressed that there should be a fair and equitable representation of employees on the Authority. The Council of Ministers therefore proposes to amend the draft Bill as follows:

- Council of Ministers will appoint members of the Authority;
- An Independent Chairman will be appointed (preferably with at least 5 years legal experience);
- The Vice Chairman will be the Chairman of the Civil Service Commission and that individual will also act as one of the employer representatives;
- One further employer representative will be nominated by Council;
- One employee representative will be nominated by the Isle of Man Trades Council;
- One employee representative will be nominated from another recognised Isle of Man trade union body which represents scheme members, but is not affiliated to the Isle of Man Trades Council;
- If there is a failure to nominate the two employee representatives, Council of Ministers will make the appointments;
- Members of the Authority have a duty to act in the interests of all members who they represent as a body, and not just the interest groups that they may individually represent;
- A quorum of members of the Authority will constitute the Chairman or Vice Chairman plus one other employer representative and one employee representative.

Changes to Current Benefits

A number of respondents raised points in relation to the provisions of various public sector schemes, highlighting that either current schemes should not be changed, or that final salary schemes should be closed to new entrants:

“Existing arrangements should be ring fenced for existing staff, but the pension schemes should be placed upon a common basis of 6.5% employee contribution. Money purchase schemes should be explored for new staff...” (Michael Commissioners)

“None of the existing superannuation arrangements with members of the Society reserve the right of the Government as employer to terminate or unilaterally alter the present arrangements. This does not appear to have been appreciated by either Hyman’s Robertson or the Council of Ministers.” (Isle of Man Medical Society/BMA)

“If, as can only be the case, it is the intention of the Isle of Man Government to terminate all existing contractual arrangements and offer new terms which are not accepted, then it will be faced with hundreds of claims for unfair dismissal or breach of contract.” (Isle of Man Medical Society/BMA)

“The Commission feels strongly that the pension arrangements for Members of the Legislature should be included within the provisions” (Ramsey Town Commissioners)

“The Commission believes that the present final salary pension schemes should be immediately closed to new entrants” (Ramsey Town Commissioners)

Council of Ministers response

The proposed draft Bill does not propose any changes to the design or benefit structure of any existing public service pension scheme. The aim of the draft Bill is to overcome some of the limitations that have been identified with the current legislation in order to enable the public sector pension schemes to function properly both now and in the future. Principally, this relates to clarifying who is responsible for maintaining and administering public servants’ pensions, whilst also standardising the powers to create and amend pension schemes across all occupational groups in the Isle of Man.

A revised or replacement Act will not introduce changes to the existing pension schemes: any such changes will only happen through the schemes themselves and thereby only with Tynwald approval.

As is widely known, a review of public servants’ pensions is currently underway. However, the review of the Superannuation Act 1984 and this subsequent draft Bill has been in the legislative programme since 2005. The two reviews are separate and distinct exercises. The modernisation of the Superannuation Act would be required whether or not public servants’ pensions were being reviewed.

Notwithstanding this, the Council of Ministers aim is to modernise the Act in such a way that it is sufficiently flexible to accommodate the potential requirements of the Island’s public servants’ pension and superannuation arrangements both now and in the future, whether or not those arrangements may change in the future.

3. Next Steps

The Council of Ministers is grateful to all the consultation respondents for taking such an active interest in the legislation that underpins the creation of occupational pension schemes for public servants on the Isle of Man.

The feedback has been very helpful in considering the best way forward.

The Council of Ministers will review the current draft Bill in light of the comments outlined above, and some other issues raised in relation to drafting points. Once this is completed, the Council of Ministers will forward the final draft of the Bill in order to begin its progression to the branches.

List of Respondents

1. Andreas Parish Commissioners
2. Ballaugh Parish Commissioners
3. Borough of Douglas
4. Civil Service Commission
5. Commissioners of Port Erin
6. Department of Health and Social Security
7. Department of Local Government and the Environment
8. Department of Transport
9. Department of Trade and Industry
10. Department of Tourism and Leisure
11. Industrial Relation Office
12. Isle of Man Medical Society/IOM BMA
13. Isle of Man Post Office
14. Isle of Man Water Authority
15. Jurby Parish Commissioners
16. Marown Parish Commissioners
17. Michael Commissioners
18. Patrick Parish Commissioners
19. Peel Town Commissioners
20. Prospect/GOA
21. Ramsey Town Commissioners
22. The Personnel Office