



Committee for Communities

# OFFICIAL REPORT (Hansard)

Pension Schemes (Conversion of  
Guaranteed Minimum Pensions) Bill  
Legislative Consent Motion:  
Department for Communities

2 December 2021

# NORTHERN IRELAND ASSEMBLY

## Committee for Communities

Pension Schemes (Conversion of Guaranteed Minimum Pensions) Bill Legislative Consent Motion: Department for Communities

2 December 2021

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

Ms Paula Bradley (Chairperson)  
Ms Kellie Armstrong (Deputy Chairperson)  
Mr Andy Allen  
Mr Stephen Dunne  
Mr Mark Durkan  
Ms Ciara Ferguson  
Mr Paul Frew  
Ms Aine Murphy  
Miss Aisling Reilly

**Witnesses:**

Mr Richard Jordan	Department for Communities
Ms Anne McCleary	Department for Communities
Ms Doreen Roy	Department for Communities

**The Chairperson (Ms P Bradley):** I welcome Anne McCleary, Doreen Roy and Richard Jordan of the Department for Communities to the meeting. We have not been speaking to you in a wee while, Doreen, so it is good to have you back with us. Anne, will you brief us?

**Ms Anne McCleary (Department for Communities):** I will start. Doreen and Richard are here on the phones, and they will be able to deal with any questions that you have if I cannot deal with them. We are pleased to have the opportunity to speak to you about the Pension Schemes (Conversion of Guaranteed Minimum Pensions) Bill — we will call guaranteed minimum pensions "GMPs" from this point — and, in particular, the proposed legislative consent motion (LCM). We have provided the Committee with a fairly comprehensive written briefing on the Bill, including a draft of the legislative consent motion. I will cover the technical context first, go into a bit more of the technical detail and then go more on the broader side of things.

The primary legislation that makes provision for GMPs is the Pension Schemes (Northern Ireland) Act 1993. Although the GMP rules were abolished for contracted-out service after 5 April 1997, past accruals remain subject to that Act. The Pensions Act (Northern Ireland) 2008 amended the 1993 Act to introduce provisions enabling schemes to convert members' GMP rights to rights to other scheme benefits. The intention was to enable a scheme to adopt a unified and streamlined benefits structure, subject to certain safeguards, in order to protect members' interests.

If the Committee is content, I will briefly run through the main provisions of the Bill. In summary, clause 2(2) to 2(9) amends the Pension Schemes (Northern Ireland) Act 1993. Clause 2(2)(b)(i) and clause

2(2)(b)(ii) amend the definition of GMP conversion to clarify that it applies to the conversion of GMP benefits due either to:

*"an earner who was alive immediately before the conversion date"*

or to:

*"a person who, immediately before the conversion date, was the widow, widower or surviving civil partner of an earner".*

It also includes consequential amendments.

Clause 2(3)(a) makes a technical amendment to ensure that any money purchase benefits accrued as part of the pension benefits are not included in the actuarial calculation to convert GMP benefits into other benefits.

Clause 2(3)(c) and clause 2(4) remove the detailed requirements in section 20D of the 1993 Act regarding those survivors' benefits that must be provided by a converted scheme and instead provides a power to prescribe in regulations the conditions that must be met in relation to those survivors' benefits that must be provided by a converted scheme.

Clause 2(5) amends section 20E of the 1993 Act. Section 20E requires that the consent of the employer in relation to a scheme must be obtained before the scheme can undertake the GMP conversion process. The amendment replaces that requirement with the power to prescribe in regulations conditions that must be met by a person, if any, who must consent before a conversion can take place. Clause 2(5) also removes the requirement in section 20E for HMRC to be notified of the conversion.

The amendments in clause 2(6) to 2(9) provide for further consequential amendments to the 1993 Act. Clause 2(10) amends section 12 of the Pensions Act (Northern Ireland) 2008, that is, "Conversion of guaranteed minimum pensions", in consequence of the amendments that I have just referred to.

The Minister for Pensions and Financial Inclusion in the Department for Work and Pensions (DWP) has asked the Minister for Communities to agree that the provisions in clause 2 of the Bill, which I have just described, extend here and to bring forward the necessary legislative consent motion.

At this point, I stress that our normal starting point is to avoid using the LCM process where possible. We are conscious of the views of Committee members on the use of LCMs. However, given the circumstances, the Minister has taken the view that, on balance, it seems sensible to seek an LCM.

I will now explain why we are seeking an LCM. As you are well aware, pensions is a devolved matter. In general, pensions policy and legislation here operate in line with corresponding provisions in England, Scotland and Wales and with section 87 of the Northern Ireland Act 1998. Private pensions are subject to what, I think that we would all agree, is a somewhat complex web of tax law, which is an excepted matter; financial services law, which is a reserved matter; and general pension law, which is a devolved matter. Given the nature of the private pensions sector, many pension schemes and, in fact, most bodies in that area, such as the Pensions Regulator, the Pensions Ombudsman, the Pension Protection Fund and the Fraud Compensation Fund, operate across the jurisdictions.

Members will be aware that the guaranteed minimum pension is the minimum pension that a pension scheme that was contracted out of the annual state pension between 6 April '78 and 5 April '97 has to provide to its members. GMPs that accrue to individuals who were contracted out between those dates create inequalities between men and women in the overall pensions that they receive. That is largely due to the fact that, during that period, the state pension ages for men and women were different, leading to different accrual rates and different ages from which GMPs were payable. To give you an example, a woman's GMP accrues at a greater rate than that of a man. *[Inaudible owing to poor sound quality]* that, at the time, a woman's working life for state pension purposes was five years shorter than that of a man. As a result, where a woman and a man have an identical work history, the woman's overall GMP would be greater than that of the man. The woman is also entitled to receive her GMP at an earlier age, which is age 60, than a man is entitled to receive his, which is age 65, creating further differences between GMPs that are payable to men and women. That is a result of indexation and revaluation requirements: the requirement that GMPs are increased annually to protect the value of a member's pension from being eroded by the effects of inflation when in payment, which is

indexation; or if the member has not yet retired but is no longer an active member of the scheme, which is revaluation.

Indexation and revaluation rates are different. Because their GMP ages differ, a woman will be entitled to indexation on a GMP in payment in periods during which a man of the same age is entitled to revaluation on a GMP that has not yet been put into payment. As a result of different rates of indexation or revaluation applying at different times, a woman's GMP will typically start out higher than that for a comparable man. However, the value of the man's GMP may overtake that of the woman. I know; "complex" does not start to describe this. Those differences create inequalities; that is the key thing here. The differences create inequalities in the amount of pension income that is received both by men and women who have GMPs, depending on the individuals' ages and circumstances.

Now we have the court coming into it. Following the European Court of Justice's decision in Barber 1990, the position has been that schemes are required to equalise overall pensions for the effect of inequalities that are caused by GMPs. That position was endorsed by the Lloyds Bank High Court ruling in October 2018.

The Bill addresses concerns that the operation of certain provisions of the conversion legislation are unclear and should be amended to make it easier to use. The changes aim to help to reassure pension schemes that they can use the conversion legislation to equalise overall pensions for the effect of differences between men and women resulting from GMPs.

In summary, the Bill aims, first, to clarify that the legislation applies to survivors as well as earners. Secondly, it provides for a power to set out in regulations the conditions that must be met in relation to survivors' benefits. Thirdly, it provides for a power to set out in regulations detail about who must consent to the conversion. Fourthly and finally, it removes the requirement to notify HMRC.

As I said at the outset, we understand the concerns about the use of the LCM process, but it is important to note that, under the Bill, the power to make subordinate legislation and to commence the Northern Ireland provisions will rest with the Department for Communities. Likewise, the powers of control over the subordinate legislation will rest with the Assembly.

The proposed changes aim to help to reassure pension schemes that they can use the conversion legislation to equalise overall pensions for the effect of differences between men and women resulting from GMPs.

If it is not agreed that the Bill should extend to here, it would be necessary for us to bring forward a separate Assembly Bill so that we could ensure equal treatment across the jurisdictions and provide clarity in the GMP conversion legislation. However, it would be unlikely that any Assembly Bill could complete its passage before 2023.

If it is agreed that the Bill should extend to here, that would allow the provisions to be enacted across the jurisdictions at the same time. That would provide legal certainty for schemes so that they can equalise overall pensions for the effect of differences between men and women resulting from GMPs.

The intention is that the Bill should be enacted as soon as possible. It would, therefore, be beneficial, timewise and in order to remove the current lack of legal clarity, which remains a barrier to schemes' use of the conversion legislation, to agree that the provisions extend to here. We were anxious to ensure that the Committee was advised of the issue as soon as possible. Subject to Executive approval, the LCM will be laid as a matter of urgency.

We are happy to answer any questions or clarify any issues that you have.

**The Chairperson (Ms P Bradley):** Thank you, Anne. I think I can say on behalf of all the Committee that the last thing we want is another Bill in front of us, especially a highly technical pensions Bill. *[Laughter.]*

**Ms McCleary:** A highly technical pensions Bill is not really what you want to be focusing on.

**The Chairperson (Ms P Bradley):** Absolutely not. I have a couple of points. One was passed to me by the Committee Clerk, and it states that clause 2(10) amends section 12 but that your paper states that it amends section 14. Just for clarity, is it section 12 or 14? That might have just been a slip of the tongue on your part because there was that much there, Anne. Could we get clarity on that?

**Ms McCleary:** I will ask Doreen and Richard to answer that.

**The Chairperson (Ms P Bradley):** You can send us through clarity on that. That is not a problem.

**Ms McCleary:** OK, right.

**The Chairperson (Ms P Bradley):** The other issue I wanted to ask you about was the lateness of the proposal coming to us. Was that due to DWP or to requiring clearance from the Minister?

**Ms McCleary:** Doreen may be able to answer that.

**Ms Doreen Roy (Department for Communities):** The Bill amends section 12 of the 2008 Act. I can confirm that. I am looking at the Bill at the moment, so it is section 12.

**The Chairperson (Ms P Bradley):** That is great. That is good, because I think it says "14" in your paper, so that is OK.

**Ms Roy:** Apologies for that.

**The Chairperson (Ms P Bradley):** No problem. That just shows you how closely our Committee Clerk is reading all the papers. Also, my other questions were about the lateness in us getting the proposal and why it has to be rushed through. A quick answer on those would be good.

**Ms Roy:** A print of the proposals in the Bill was not available until October. We then moved as quickly as possible to come to the Committee and to start the process once the Minister agreed that we should do that. I hope that helps to explain what is perceived as a time lag.

**The Chairperson (Ms P Bradley):** That does explain it. You got it in October, so it was just waiting for the Minister to clear it, I suppose, before it came to us.

**Ms Roy:** The Bill's second reading in Parliament was on 26 November. We now know that the Bill has Government support, because it was subject to a ballot. It would not have been feasible for us to get to you any earlier than we have done.

**The Chairperson (Ms P Bradley):** That is fair enough. Thank you, Doreen. Does anybody have anything that they want to add quickly?

**Ms Armstrong:** I declare an interest, because I think that I am one of those people who were opted out by their company pension scheme. I think that I am one of those people who have such a pension scheme somewhere.

I will be honest. The technical stuff is a melter. We are all aware that Women Against State Pension Inequality (WASPI) is concerned about the changes to the state pension age. Does the Bill do anything to address its concerns? I know that it mentions balancing out the position for men and women. Of course, we do not want inequality, so we are quite happy with that one. Is there anything in it that can help those women?

**Ms McCleary:** The short answer is that the Bill is not related to that. It deals with is a totally different issue.

**Ms Armstrong:** OK.

**Ms Roy:** Yes. The Bill deals with existing conversion provisions in the 1993 Act. The provisions are already in place. The Bill simply aims to clarify them, because there is perceived uncertainty among pension scheme providers about, for example, the guidance on the methodology for equalisation. The proposal aims to address those concerns, because some pension schemes providers are nervous and concerned about not taking the right action without realising it and then leaving themselves open to legal challenge.

**Ms Armstrong:** OK. This is my final question. Something that was said set off alarm bells with me, and it was that — Anne, keep me right on this — any future changes can be made through

subordinate legislation, which would be the responsibility of the Department for Communities and the Assembly. What would the implications be for us if we diverged from Westminster?

**Ms McCleary:** Doreen, can you answer that?

**Ms Roy:** As ever, when we bring forward regulations to the Committee, they are in proposal form. It is then up to the Committee to determine whether it agrees with those regulations. Having said that, as you know, in line with section 87 of the Northern Ireland Act 1998, there is, in effect, a single system for pensions across all the jurisdictions in order to allow for the smooth running of pension schemes. I therefore do not think that any added complexity would help the situation.

**Ms Armstrong:** OK. I always get worried when they want us to take on subordinate regulations. If we made any changes, that would knock us outside that centralised pension scheme. That is me. Thank you.

**Ms Roy:** It is a devolved area, so that is why we bring all the pensions regulations to you.

**The Chairperson (Ms P Bradley):** OK. Thank you, Kellie. Nobody else has indicated that they want to ask anything.

Anne, Doreen and Richard, thank you very much for briefing the Committee today. Doreen, it was good to hear your voice again. I have not heard from you in a wee while.

**Ms Roy:** OK. Thank you.

**The Chairperson (Ms P Bradley):** OK, folks. Thank you.

**Ms McCleary:** OK. That is great. Bye-bye.