



Northern Ireland
Assembly

**COMMITTEE FOR SOCIAL
DEVELOPMENT**

**OFFICIAL REPORT
(Hansard)**

**Pensions Regulator Tribunal (Transfer of
Functions) Bill**

12 November 2009

NORTHERN IRELAND ASSEMBLY

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SOCIAL DEVELOPMENT**

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Members present for all or part of the proceedings:

Mr Simon Hamilton (Chairperson)
Mrs Mary Bradley
Mr Mickey Brady
Mr Jonathan Craig
Ms Anna Lo
Mr Fra McCann

Witnesses:

Ms Doreen Roy)
Ms Anne McCleary) Department for Social Development
Mr Gerry McCann)

The Chairperson (Mr Hamilton):

We will now receive a briefing on the draft pensions regulator tribunal (transfer of functions) Bill. Members papers' include a covering letter from the Committee Clerk, a summary paper from the Department setting out the changes to pension legislation included in the draft Bill and a copy of the explanatory and financial memorandum for the draft Bill.

I welcome the following departmental officials to the Committee today: Anne McCleary, Gerry McCann and Doreen Roy. Please give some brief, introductory remarks, after which I will ask members to put to you any queries that they have.

Ms Anne McCleary (Department for Social Development):

Thank you, Chairman. I will give an introduction to the draft Bill and explain what it is about.

The Pensions Regulator is the main UK regulator of pension schemes. Its primary aims are to protect the benefits of the members of work-based pension schemes; to reduce the risk of situations arising that may result in calls on the pension protection fund; and to protect and improve the understanding and good administration of work-based pension schemes.

The Pensions Regulator tries to prevent problems from developing and provides support and advice to pension scheme trustees, administrators and employers where potential problems are identified. In addition, the Pensions Regulator has a range of powers that allows it to carry out investigations, impose financial penalties, and prohibit unfit people from acting as trustees of schemes. It also has the power to instruct schemes, employers and others to carry out certain actions, to ensure, for example, that a particular scheme is properly run or that adequate funding is in place.

The Pensions Regulator Tribunal is an independent appeal tribunal that was established to hear appeals against determinations of the Pensions Regulator. Tribunal members are required to have special experience of the financial regulatory environment and/or the operation of pension schemes. Unlike the appeal bodies for social security, the Pensions Regulator Tribunal operates on a UK-wide basis and its functions, as is the case for the Pensions Regulator, are conferred by both GB and Northern Ireland legislation.

The Tribunals, Courts and Enforcement Act 2007 provides for a new, simplified statutory framework for tribunals, bringing the existing tribunal jurisdictions together. That Act provides for a new unified structure by creating two new tribunals — the First-tier Tribunal and the Upper Tribunal — and gives the Lord Chancellor the power to transfer the jurisdiction of existing tribunals to those two new tribunals.

The Lord Chancellor proposes to transfer the functions and members of the Pensions Regulator Tribunal to the Tribunals Service with effect from 6 April 2010, meaning that the existing Pensions Regulator Tribunal structure will cease to exist. However, the Lord Chancellor does not have the power to effect the transfer of the Pensions Regulator Tribunal's functions in

relation to Northern Ireland. Given the specialised nature of the Pensions Regulator Tribunal's work and the small number of appeals UK-wide, it is not practicable to establish a separate tribunal for Northern Ireland. Indeed, of late, there have been no appeals in Northern Ireland.

The draft Bill is strictly a parity measure to effect the transfer of the Pensions Regulator Tribunal's functions in respect of Northern Ireland to the new Tribunals Service structure simultaneously with Great Britain. It includes provision to allow the Department to make consequential amendments; for example, to subordinate legislation by way of an Order in Council, subject to the confirmatory procedure. It also makes transitional provision to ensure a smooth transfer; for example, to allow any cases that are already in process at the date of transfer to continue under the new structure.

The draft Bill also ensures that, in transferring the functions of the Pensions Regulator Tribunal in relation to Northern Ireland to the new Tribunals Service structure, the right to a fair and independent appeals hearing is maintained. It is important that people in Northern Ireland continue to have a right of appeal to an independent appeal tribunal in relation to determinations of the Pensions Regulator, not least to ensure compatibility with article 6 of the European Convention on Human Rights.

The draft Bill will bring no cost to the Department. The costs for the legal assistance scheme, in connection with proceedings relating to Pensions Regulator appeals, will continue to be funded by the levy on pension schemes.

To sum up, the provisions of the draft Bill merely give effect to the transfer of functions of the Pensions Regulator Tribunal into the new Tribunals Service structure, in line with England, Scotland and Wales. The provisions are purely technical in nature. Rights of appeal against a determination of the Pensions Regulator remain unchanged, and appeals against determinations of the Pensions Regulator will continue to be heard by an independent appeal tribunal under the new Tribunals Service structure. In practical terms, the only difference for the end user will be the name of the tribunal.

The Department has conducted a screening exercise and the draft Bill has no implications for equality of opportunity.

The Chairperson:

Thank you, Anne. The draft Bill sounds very simple and straightforward in some respects, but not in others.

You said that there were no appeals to the tribunal in Northern Ireland. How active has the regulator been in other respects; for example, with regard to freezing orders or continuations? Has there been any such activity?

Ms McCleary:

I am not aware of any.

Mr Gerry McCann (Department for Social Development):

As far as we know, there have not been any freezing orders in Northern Ireland.

The Chairperson:

Have there been any applications from Northern Ireland to the protection fund?

Mr G McCann:

There have been several applications from schemes and as far as I know they have all been accepted or are pending.

The Chairperson:

So it is quite a straightforward piece of legislation. It changes the name, but the process will be the same.

Ms McCleary:

Yes.

Mr Brady:

I presume that the idea is to bring the tribunals system within the Court Service. Have there been no appeals because pension schemes here are so efficient or because people tend not to appeal? It seems to me that the transfer to the Court Service may be more of a problem because of the more legalistic framework.

Ms McCleary:

Arguably, it is the opposite.

Mr Brady:

Yes, it should be, but that is sometimes the perception, and perception is sometimes everything. I presume that a two-tier structure would be in place for appeals. The infrastructure to allow that is in place here, so having appeals here would simply be a matter of setting up the appeals and the person going along. Therefore, I presume that people would not have to go to Britain for an appeal?

Mr G McCann:

No, they do not have to go to Britain. If there is to be an appeal here, an appeal body would come here and the appeal would be held locally, so people would not have to fly to London, for example.

Mr Brady:

So, the fact that no appeals have been heard here does not mean that it is not possible.

Mr G McCann:

No, we have processes in place in case that should happen.

Ms McCleary:

Also, it would be the same people who had heard appeals under the old system.

The Chairperson:

There seem to be no more questions from members. Given that the legislation is technical and does not have any policy implications, would the Minister be minded to seek accelerated passage for the draft Bill? Has a decision been reached on that?

Ms McCleary:

The draft Bill's memorandum has been submitted to the Executive for their consideration. Subject to the outcome of that consideration, if the Minister seeks accelerated passage, she will be back before the Committee to explain why and to seek the Committee's support.

The Chairperson:

OK. Thank you very much.