

DISCUSSION PAPER

RPA TRANSFER OF EMPLOYEES FROM NI CIVIL SERVICE TO LOCAL GOVERNMENT: PENSIONS

BACKGROUND

The implementation of the Review of Public Administration in Northern Ireland includes the transfer of a range of functions from Northern Ireland Civil Service (NICS) Departments to the eleven new district councils in 2011. As a consequence a range of NICS employees will also be transferring to Local Government.

There is a requirement to make continuing pension provision for all NICS transferring employees. The purpose of this paper is to consider the context, implications and options concerning pensions in respect of those transferring.

POLICY CONTEXT

The Northern Ireland Executive has already agreed to accept the recommendations of the Public Service Commission regarding the means for transferring employees moving employers as a consequence of the RPA and associated protections. This is contained in the 3rd Guiding Principle (Staff Transfers).

3RD GUIDING PRINCIPLE (STAFF TRANSFERS)

Both the mechanism for transferring employees and the treatment of employee pensions on transfer fall under the 3rd Guiding Principle which states:

In relation to transfers themselves:

The Transfer of Undertakings (Protection of Employment) Regulations 2006 shall apply to all transfers arising from the Review of Public Administration and, to ensure certainty, Government should declare that all such transfers are relevant transfers for the purposes of those regulations...

And as regards pensions:

Any pension scheme, into which an employee is transferred, must, in the opinion of a professionally qualified actuary, provide benefits that are no less favourable taken as a whole than those provided by the pension scheme of which that employee was a member on the day before transfer. The actuarial assessment will include all benefits in respect of old age, invalidity and survivors' benefits arising from their occupational pension scheme membership.

LEGISLATIVE PROVISION

In giving effect to the 3rd Guiding Principle, it is a matter of policy that the wording developed for the transfers of employees to the new Libraries Authority set out in the Libraries Act

(Northern Ireland) 2008, Schedule 2 will be used as a template for other transfers. The Libraries Act states that:

With regard to the transfers themselves:

“The Transfer of Undertakings (Protection of Employment) Regulations 2006 (S.I. 2006/246) apply to the transfer whether or not the transfer would, apart from this paragraph, be a relevant transfer for the purposes of those regulations”.

In respect of pensions:

“Pension protection” is secured for a transferring employee (“T”) if after the change in T’s employer T has, as an employee of the Authority, rights to acquire pension benefits and those rights are the same as or (taken as a whole) not less favourable than those which T had as an employee of the education and library board.

The wording used in the Act will form the template for the Local Government legislation to satisfy the criteria of ‘no less favourable, taken as a whole’ for employees transferring from the NICS to Local Government.

As members may well be aware, the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE) is designed to safeguard employee rights when employers “change hands”.¹ However TUPE itself only provides for a very limited protection of pension rights, hence the need for the additional provisions within the Libraries Act to establish higher levels of protection as envisaged under the 3rd Guiding Principle. This higher level of pension protection is often referred to as “TUPE plus”.

HOW MANY EMPLOYEES WILL BE AFFECTED?

As members will be aware, determining final and exact data on employees transferring from government departments to local government has been difficult, however recent estimates suggest the number of employees affected is approximately **1,021** (see Appendix 1).²

FACTORS FOR CONSIDERATION

As will be evident from the background and context above, the objective that is required to be achieved in dealing with the pension liabilities of employees transferring from the NICS is that they should receive “benefits that are no less favourable taken as a whole than those provided by the pension scheme of which that employee was a member on the day before transfer”.

This issue would be of only relatively minor import were it the case the local government (NILGOSC) scheme provided benefits that were no less favourable as a whole. It is most

¹ The TUPE Regulations protect the pay, terms and conditions of **transferred employees**, preventing these entitlements being changed without agreement. The Regulations also protect their accrued pension rights, provide some protection against unfair dismissal and state that trade union recognition and collective agreements in force at the time of the transfer, be maintained.

² Department of the Environment (2009) An assessment of the options for local government service delivery: Phase 1 Report Draft Consultation conducted by PriceWaterhouseCoopers

unlikely that any assessment would conclude that they did. Hence it is important to examine the main options available for achieving the objective of protecting pensions and assessing which achieves that objective with least difficulties to employers and employees.

POSSIBLE PENSION OPTIONS

There are probably three obvious potential options.

1. For transferring NICS employees to join the Local Government Pension Scheme (LGPS)
2. For transferring NICS employees to remain within the Principle Civil Service Pension Scheme Northern Ireland (PCSPS(NI))
3. For a new 'analagous' scheme to be designed to meet these requirements outside of either of those two schemes.

NICS EMPLOYEES TRANSFERRING TO LGPS

ADVANTAGES

- i. LGPS is established, stable, trusted and has been used in Local Government for many years.
- ii. This option could satisfy the 'no less favourable treatment' criteria for transferring employees (although this would need to be achieved by making adjustments around the scheme to ensure no detriment was being suffered by individuals).
- iii. Local Government employees are trained on the administrative aspects of the scheme which would mitigate some of the additional investment requirements if a new scheme/ system was introduced.

DISADVANTAGES

- i. The NICS would have to fund the transfer of liabilities from the PCSPS(NI) to NILGOSC. We have no means of establishing to any degree of accuracy what the quantum of those liabilities would be, however we feel that it is likely that they would be in the tens of millions of pounds. Given that the PCSPS(NI) is not a 'funded' scheme (i.e. there is no physical investment fund to meet liabilities) this money would have to met from departments budgets.
- ii. Ensuring that transferring employees are treated 'no less favourably when taken as a whole' will likely be a difficult task within the NILGOSC scheme and probably require constant monitoring and adjustment. This would likely present a heavy administrative burden.
- iii. Current LGPS systems and processes would have to be adjusted to take account of NICS employees. Matching the tiered contributions mechanism now embedded in the LGPS and other conditions around e.g. ill-health retirement, as well as the various pension schemes that the NICS have in place, such as 'nuvos', 'premium', 'partnership' and 'classic' will prove difficult. In addition, substantial administrative/ training resources will be required.

NICS EMPLOYEES REMAINING IN THE PCSPS(NI)

ADVANTAGES

- i. There would in many ways be fewer logistical complexities when compared with moving to or creating a new pension scheme.
- ii. This solution would provide the maximum security to transferring employees as it is the scheme they already belong to, are familiar with and trust.
- iii. The criteria of treating transferring employees 'no less favourably, taken as a whole' in terms of pensions would be satisfied in the most obviously full way.
- iv. This option has already been successfully adopted in previous cases of RPA employee transfers (e.g. Health sector).

DISADVANTAGES

- i. Administration would be extensive as two systems would be in use and this increases the opportunity for confusion and duplication. It would be necessary to establish Service Level Agreements etc with Civil Service Pensions.
- ii. Investment in IT infrastructure would need to occur in order for current councils payroll systems etc to interface with NICS systems.
- iii. Investment would also be needed for council employees in training in the operation of the NICS pension schemes.

CREATION OF A BESPOKE PENSION SYSTEM

ADVANTAGES

- i. Establishing a completely new scheme will enable provisions to ensure that 'no less favourable, taken as a whole' treatment of the transferring employees pensions occurs.
- ii. This option gives the flexibility to tailor pension scheme options accordingly. PCSPS(NI) employee contributions and benefits could remain unchanged.
- iii. Whilst additional administration would be required it might be less than in some of the other options.

DISADVANTAGES

- i. Creating a bespoke pension scheme would be very expensive, both in terms of start up and also most likely in operation as it would not have the 'mass' of other schemes which reduces overheads.
- ii. Whilst it could be designed to maintain current levels of employee contribution, the corollary of that would be a rise (and most likely a very significant rise) in employers contributions.

- iii. There would need to be development of specific supporting IT systems which would have significant up front costs.
- iv. Arguably, operating a further different scheme would add to already (unavoidable) complexity and likely add to the administrative burden significantly.

CASE STUDY – MAINTAINING MEMBERSHIP OF PCSPS(NI)

Under the implementation of RPA, the Civil Service has recently faced the challenges associated with NICS employee transfers to the new Health & Social Care bodies. The outcome, having considered the options available, was that transferring NICS remained in the Principal Civil Service Pension Scheme (Option 2).

This necessitated amendments to the relevant statutory provisions (as would be required also in the case of local government if this option were pursued). A new Statutory Rule was made for the Civil Service Pension Scheme - No.150 Pensions 'Superannuation (Health and Social Care Bodies) Order (Northern Ireland) 2009³ which adds the list of health bodies to Schedule 1 to the Superannuation (NI) Order 1972 with effect from 1 April 2009. This makes provision for those in these new bodies who were in Civil Service Pension Scheme immediately prior to 1 April 2009 to continue in that scheme.

LOOKING AT THE EVIDENCE

It is clear that any of the possible options presented in this paper come at a price and we would recommend that further more detailed work be carried out to identify both the financial and other costs more fully and accurately than we are in a position to. Further detailed work is also necessary on the specific logistical aspects of each.

From the evidence before us now, our view is that in principle option 2 – 'NICS employees remaining in their present PCSPS(NI)' seems likely to be the least detrimental with regard to the financial, administrative, and logistical impact. As this model has already been tested and implemented effectively within the current Health and Social Care sector, it could be used as the foundation model for employee transfers of a similar nature.

³ Refer to http://opsi.gov.uk/sr/sr2009/nisr_20090150_en_1

APPENDIX 1

Below is a list of Government Departments where employees will be transferred to Local Government. These numbers have been extracted from the PWC draft report. It refers only to NICS Employees transferring in Whole Time Equivalents (WTE)⁴.

Department of the Environment

Employees in post Total Admin	223 WTE
Employees in post Total Professional and Technical	378 WTE
Total	601 WTE

Department of Culture, Arts and Leisure

Armagh County Museum	7.5 WTE
Functions of the NI Museums Council	4 WTE
Total	11.5 WTE

Department of Regional Development

Local Roads Public Realm Functions	220 WTE
Donaghadee Harbour	2 WTE
Total	222 WTE

Department of Social Development

Tackling Urban Deprivation	79 WTE
Town and City Centre Regeneration	58 WTE
Local Community Development	5 WTE
Total	142 WTE

In addition 33 posts within Housing Related Functions

Department of Enterprise Trade and Investment

Economic Development	8 WTE
Tourism	4 WTE
Total	12 WTE

Other Government Departments that transfers will be happening are the Department of Agriculture and Rural Development and Office of the First Minister and Deputy First Minister.

⁴ WTE (Whole Time equivalent) is calculated by aggregating the total number of hours employees in a particular grade are contracted to work, and dividing by the standard hours for that grade. In this way, part-time employees are converted into an equivalent number of 'whole-time' employees