

4. BILLS FOR SECOND READING

**4.1. Public Sector Pensions (Amendment) Bill 2019 –
Second Reading approved**

Mr Thomas to move:

That the Public Sector Pensions (Amendment) Bill 2019 be read a second time.

The Speaker: We turn to Item 4, Public Sector Pensions (Amendment) Bill 2019 and I call on Mr Thomas to move.

The Minister for Policy and Reform (Mr Thomas): Thank you, Mr Speaker.

The statutory basis for the Isle of Man's Public Sector Pension Schemes is the Public Sector Pensions Act 2011. This short amendment Bill seeks to improve upon its provisions by: amending Section 3 of the Act which sets out how schemes for the judiciary are made; amending Sections 4 and 6 which contain the provision for making schemes so that they include pension regulations and orders in the definition of schemes; and amending Section 15 to amend the Tynwald procedure for schemes that make administrative changes to schemes, i.e. those that do not amend contribution or accrual rates.

Stakeholder consultation took place on this amendment Bill with seven responses including a collective response from members of the judiciary.

Clause 4 of the short Bill is the one which affects the judicial scheme. Under the current provisions, the consent of each individual in the scheme is required before any change can be made to the pension scheme. As drafted, the proposed amendment sought to remove that right and to put in place arrangements that are more aligned to the remainder of the public service.

Following discussions this summer, Government is minded to move an amendment at clauses stage to address a concern raised by the current judiciary in respect of this clause. And I intend to support this amendment which adds a saving provision regarding the consent for current members and, subject to final approval, enables an amendment to the judicial pension scheme to be brought to Tynwald for approval.

For the benefit of doubt, the amendment proposed in clause 4 is unrelated to the core functions of the judiciary; rather it is focused on how pension arrangements are implemented for the judiciary. As such, this amendment does not affect the independence of the judiciary although it seeks to put in place legislation which provides equity of treatment for all public servants in respect of how changes are made to public sector pension schemes.

The amendment regarding schemes, regulations and orders addresses an issue raised by the fact that under the former Superannuation Act 1984 pension provision was made for police officers by the use of Police Pension Regulations, and for teachers through the Teachers' Superannuation and Pension Orders; whereas the 2011 Act defined the scheme as a Superannuation Scheme made or treated by this Act or made under this Act.

The Public Sector Pensions Authority has been advised that whilst the PSPA may term all public service pension arrangements as schemes, legislatively a scheme is neither an order nor regulations. Therefore whilst the pension arrangements for police and teachers have been deemed to have been made by the PSPA, currently the PSPA has to update the appropriate orders and regulations via an amending scheme rather than amending orders or regulations as the case may be. The PSP considers that it would be more straightforward to have the ability to make amending orders and regulations, and is therefore seeking to amend the definition of 'schemes' within the 2011 Act to include superannuation orders and regulations.

Finally, in respect of Tynwald powers, the 2011 Act currently states that a scheme or regulations made under this Act must be laid before Tynwald as soon as is practicable after it is made, and if at the sitting at which it is laid or the following sitting Tynwald fails to approve the

scheme or regulations, they shall cease to have effect. In cases where amending schemes are being made for administrative purposes, i.e. correcting a definition or clarifying a rule, the PSPA considers that these procedures are unnecessarily burdensome.

The PSPA is therefore seeking to follow the procedure taken by various items of Social Security legislation where administrative amendment schemes would be subject to negative resolution procedure and therefore only require laying before Tynwald. However, in cases where an amending scheme seeks to amend the contribution rates, accrual rates or benefit provisions of scheme members then such schemes would be subject to the current procedures, i.e. positive resolution.

The PSPA is therefore seeking to put in place provisions which differentiate between the two types of secondary legislation.

Hon. Members should be assured that the PSPA is not seeking to put in place a procedure that can be utilised to introduce any form of change by stealth, but rather to reduce the burden slightly in respect of administrative changes. I remind Hon. Members that before determining which Tynwald procedure is appropriate in each case the PSPA will have reviewed both the proposed amendments and the feedback received following statutory consultation.

I also remind Members that the PSPA board is made up of both employee and employer representatives with an independent Chair, and any scheme will also have been reviewed by the Attorney General's Chambers and approved by the Council of Ministers for introduction in Government as Government business.

So, and in closing, this Bill neither introduces changes to current schemes nor gives new or different powers to the Public Sector Pensions Authority but it amends the current Act in light of the experience of having to progress pension changes through it.

Mr Speaker, I beg to move the Second Reading of the Public Sector Pensions (Amendment) Bill 2019.

The Speaker: Hon. Member for Ayre and Michael, Mr Cannan.

Mr Cannan: Thank you, Mr President.

I beg to second and reserve my remarks.

The Speaker: Mr Hooper, Hon. Member for Ramsey.

Mr Hooper: Thank you very much, Mr Speaker; just a few very short questions for the Minister.

In respect of the proposed clause 4, the removal of the consent requirements, he mentioned this is in relation to the judicial schemes. Can he confirm this is solely in respect of the judicial schemes and this condition does not already exist for any other schemes?

My understanding of the reason this clause was originally in the Bill was to help protect the perceived independence of the judiciary or to prevent any perception of interference. Following the removal of this consent mechanism, can he please advise how he intends to make sure that this perception is not affected by this change? And if he could expand perhaps a little bit more on his proposed amendment.

Further on this point, after this consent mechanism has been removed there will need to be an order laid before Tynwald to make actual changes to the judicial pension scheme. Can he please advise what his timescale is in respect of that proposed order?

My last question is: in respect of the procedures he has just referenced, I appreciate that the existing Act already has the affirmative procedure outlined in it, but can the Minister please give us a little bit more information perhaps on why a full approval procedure was not considered appropriate, given how important pension schemes are especially when they are coming before Tynwald Court? I would just appreciate why he does not feel that the highest level of approval should be the most appropriate route.

Thank you.

The Speaker: Hon. Member for Douglas East, Mr Robertshaw.

Mr Robertshaw: Thank you, Mr Speaker.

The Hon. Member for Ramsey has already asked the questions that I was going to ask. So I look forward to the reply.

The Speaker: In that case, I call on the Hon. Member for Douglas Central to reply.

The Minister: Thank you.

Dealing with the administrative issue first. This was a point actually raised by one of the teachers' unions in the stakeholder consultation point, so we reflected on it greatly. And, as I said in my original moving speech, is entirely administrative and I hope that every employee inside the scheme, every union representing people inside the scheme can accept that this is purely and simply to reduce the administrative burden for purely definitional changes and clarifications; it is not in any way aimed that this procedure would be changed for material issues like the benefits accrued and the contributions made and all the other aspects of the scheme.

I would remind Hon. Members that state pensions are equally important for people and, as I said in my opening remarks, this is purely making a change that reflects and mirrors the systems inside the Social Security Act, not a massive change. I can absolutely assure this House that the intention – there is nothing stealthy or clever about it – it is purely to bring things in line with the normal procedures for this type of administrative process.

In terms of the judicial arrangements, yes, the hon. questioner and the other hon. questioner who would have asked the same question, makes an incredibly good point, which is that we absolutely need to make sure that not only does the judiciary understand that they are completely independent of the executive branch and the parliamentary branch, except as covered by law and procedure, but the whole public needs to understand that we have an independent judiciary on the Island because that is absolutely fundamental for a healthy democracy.

Hon. Members will remember that we passed the Council of Ministers Act during this year to make that very point and to put it into statute, so a case could be made and somebody could attempt to argue that in some senses this is connected to that process, but I categorically assert against that and deny that; it is an entirely separate issue. No other public servant has the explicit individual consent and as I presented the case, I think quite clearly in my opening remarks, what we are doing is we are separating out entirely the notion of judicial independence from the idea that there has to be equity in terms of public servant pension arrangements. So a case could be made in terms of the Human Rights Act; a case could be made in terms of reducing salaries – but I have had advice on all of those issues and they are not relevant.

The crucial point in this is that this is in no way aimed at upsetting the very delicate and very precious balance in terms of judicial independence. But it does actually bring fairness into the contributions and the consent around them for the judicial pension scheme.

I was also asked an excellent question about the timetable and this has been a delicate process and I do not want in any way to upset that delicate process, but basically agreement was reached some months ago – there is trust on both sides, and I would hope with a fair wind that the scheme could be before the Tynwald Court no later than February, perhaps even in January or December.

What I need to establish is that there is agreement around the amendment that is proposed in this Branch and also in the other place. And if we can establish that I think we have got everything in place to put to bed this very important part of Public Sector Pension Reform which is bringing the last scheme inside a fair basis of contributions and benefits from the scheme, and

also integrating them reasonably into the cost-sharing arrangements in the same way that other public servants are. And at the same time respecting the independence of the judiciary which is absolutely paramount in any functioning democracy.

So I hope, with that, this House can be satisfied and the other place can be satisfied and we can go forward as fast as we can, so we have certainty about the law such that I can bring a judicial scheme to Tynwald in February, perhaps even in January, and you never know, perhaps even in December.

The Speaker: I put the question that the Public Sector Pensions (Amendment) Bill 2019 be read for a second time. Those in favour, say aye; against, no. The ayes have it. The ayes have it.