

PUBLIC SECTOR PENSIONS (AMENDMENT) BILL 2019

EXPLANATORY NOTES

These notes are circulated for the information of Members with the approval of the Member in charge of the Bill, Hon. Chris Thomas MHK

INTRODUCTION

1. These explanatory notes relate to the Public Sector Pensions (Amendment) Bill 2019. They have been prepared by the Public Sector Pensions Authority in order to assist readers of the Bill. They do not form part of the Bill.
2. In the opinion of the Member moving the Bill, the provisions of the Bill are compatible with the Convention rights within the meaning of the Human Rights Act 2001.
3. The Act is not expected to have any financial or human resource implications given that it does not amend any of the provisions of the current pension and superannuation schemes, but rather the primary legislation that underpins them.
4. An Impact Assessment was prepared and in the opinion of the Member moving the Bill, the balance between the benefit and any costs is the right one in the circumstances.

BACKGROUND

5. This Bill, which is promoted by the Council of Ministers, seeks to amend the Public Sector Pensions Act 2011, which provides the statutory basis for the making, amendment, management and administration of Public Sector Pension Schemes in the Isle of Man.
6. The Public Sector Pensions Act 2011 ('the Act') enables schemes to be created for particular groups of public servants. A number of Superannuation Schemes have been created under the powers available under the Act, with the statutory provisions that underpin the pension arrangements for Police, Teachers and the Judiciary being deemed as having been made by the Act.
7. The Act has now been in place for seven years and, having now worked under its provisions, the Public Sector Pensions Authority ("the PSPA") identified a number of areas where it considered the Act may benefit from being amended with a view to improving the enabling legislation for Public Sector Pensions. This included:
 - the provisions of the Act that set out how schemes for certain Crown appointees (the Judiciary) are made (Section 3) and in particular, that their consent is required to amending schemes;
 - the provision for making Schemes, to include Pension Regulations and Orders in the definition of Schemes; (Sections 4 & 6);
 - that amending schemes that make administrative changes to Schemes (but not those that amend contribution or accrual rates) should be required to be laid before Tynwald and therefore subject to a "negative resolution" in the same manner as some Social Security legislation (Section 15);
8. In September 2018 Council agreed the inclusion of amending legislation in relation to the Public Sector Pensions Act 2011 in the Legislative Programme. In October 2018 the PSPA's proposals were considered by the Council of Ministers Legislation sub-committee, which agreed that the Public Sector Pensions (Amendment) Bill, being a short Bill would be added to the Legislation schedule for introduction during 2018/2019.

9. Being mindful of the interactions with reforms to the Judicial Scheme and the ongoing discussions around such reforms, the PSPA Executive sought confirmation from Council that it wished to include the amendment at Section 3 in the Amending Bill. Noting the comments made by the PSPA, Council considered that all elements of the Bill should be progressed.

CONSULTATION

10. Drafting instructions were prepared and the Attorney General's Chambers drafted an amending Bill. Given the inclusion of the amendments to the way in which Schemes are made for the Judiciary, and owing to the ongoing and protracted discussions with the Judiciary regarding changes to their Pension Scheme, the PSPA considered a consultation upon the draft Bill might be postponed until those discussions had been concluded. Consequently, consultation on the draft Bill did not commence until 24 April 2019 and was concluded on 23 May 2019.
11. In total seven responses were received, which included a collective response from Members of the Judiciary, a response from a Teaching Union (NASUWT) and 5 from individuals.
12. Further detail of the consultation responses will be included in the final consultation response document as approved by the PSPA Board at its meeting on Friday 14th June 2019.
13. Having completed the consultation exercise the PSPA sought the views of Council with regard to progressing the Bill, in particular given the comments received from the Judiciary. Council considered that the proposed amending Bill should be progressed by Council, supported by the PSPA, as drafted.
14. The Bill has therefore been finalised by the Attorney General's Chamber

CLAUSES OF THE BILL

15. **Clauses 1 and 2** - deals with introductory matters, *clause 1* giving the resulting Act its short title, *clause 2* providing for its commencement.
16. **Clauses 3 to 7** - deals with amendments to the *Public Sector Pensions Act 2011* (the "2011 Act").
17. **Clause 3** - provides that the 2011 Act is to be amended in accordance with the following clauses.
18. **Clause 4** - *repeals* section 3(2)(a) of the 2011 Act. That section provides that the consent of the judges of the High Court (within the meaning of section 3(1) of the *High Court Act 1991*) and the Attorney General and the Solicitor General for the Island is required for the making of a superannuation scheme in respect of those persons. With the repeal of this provision, such consent will not be required.
19. **Clause 5** - amends section 4 of the 2011 Act to clarify the definition of "scheme" to include superannuation provisions originally made by order or regulations before the 2011 Act was in operation, and which are treated as a scheme validly made under the 2011 Act.
20. **Clause 6** - amends section 6 of the 2011 Act. It omits the reference to the approval of Tynwald in section 6(1)(c). The procedure for the making of schemes, orders or regulations is set out in section 15 of the 2011 Act, so the reference to the approval of Tynwald in section 6(1)(c) is superfluous.
21. **Clause 6** - inserts into section 6 of the 2011 Act a new subsection (1A) to clarify that the Public Sector Pensions Authority is able to amend existing schemes, which are

treated as schemes made under the 2011 Act and which were originally made by order or regulations, by making amending orders or regulations, rather than schemes.

22. **Clause 7** - substitutes section 15 of the 2011 Act with a revised section 15, to provide that the Tynwald procedure for the making of schemes, orders or regulations under the 2011 Act is the affirmative procedure, but that purely administrative amendments may be made under the negative procedure.