

SUPERANNUATION BILL

EXPLANATORY NOTES

INTRODUCTION

1. These Explanatory Notes relate to the Superannuation Bill as brought from the House of Commons on 14th October 2010. They have been prepared by the Cabinet Office in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by Parliament.

2. The Notes need to be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So where a clause or part of a clause does not seem to require any explanation or comment, none is given.

SUMMARY AND BACKGROUND

3. The Bill places upper limits on payments under the Civil Service Compensation Scheme (CSCS), a scheme made under the Superannuation Act 1972. The CSCS sets out the tariffs which may apply when the employment of civil servants is terminated prematurely. The terms of the CSCS were amended in February 2010, but those amendments were quashed in judicial review proceedings brought by the Public and Commercial Services Union, so that the former compensation terms have now revived. For many civil servants, the former terms produced more generous outcomes than did the February 2010 terms.

4. The former CSCS terms, as now revived, generally provide a service and age-related payment for people aged under 50 and enhanced early retirement terms for people aged between 50 and 60. The amount of the payment varies depending on the tariff, with the tariff applying on compulsory redundancy providing payments of up to 3 years' pay and enhanced early retirement packages which can cost employers 6 years' pay. Redundancy terms for certain employees who joined before 1987 can lead to higher costs for employers.

5. The Bill caps compensation payable under the CSCS at a maximum of 12 months' pensionable earnings for compulsory exits, and 15 months' pensionable earnings for voluntary exits. The Bill also contains a 'sunset' clause, whereby clause 2 (which imposes the caps) will expire after 12 months, unless repealed earlier by order-making powers, or

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extended or revived using order-making powers. The Government's intention is that a new scheme amending the CSCS will be made after Royal Assent to supersede the limits in clause 2. The trade unions will have been consulted before the new amending scheme is made.

6. The Bill also amends the Superannuation Act 1972 so as to remove the requirement in section 2(3) of that Act for union consent to detrimental changes to the CSCS. It makes no changes to the other protections provided by the 1972 Act and leaves in place the requirement for the Government not to make changes to the CSCS without having consulted the unions or other persons affected.

TERRITORIAL EXTENT AND APPLICATION

7. The Bill applies throughout the United Kingdom. The Bill does not contain any provisions falling within the terms of the Sewel Convention. Because the Sewel Convention provides that Westminster will not normally legislate with regard to devolved matters in Scotland without the consent of the Scottish Parliament, if there are amendments relating to such matters which trigger the Convention, the consent of the Scottish Parliament will be sought for them.

COMMENTARY

Clause 1 – Consents required for civil service compensation scheme modifications

8. *Clause 1* removes the requirement in section 2(3) of the Superannuation Act 1972 to obtain the consent of civil service trade unions for reductions in benefits provided under the CSCS. But the removal of this requirement does not apply to benefits provided in respect of an exit which is the consequence of a notice of dismissal given, or an agreement made, before the scheme making the reductions comes into effect. (See *subsections (1) to (3)*.)

9. *Subsection (4)* provides that the removal of the requirement for trade union consent applies to reductions given effect to by a scheme made after the coming into force of clause 1.

10. *Subsections (5) and (6)* provide that where a scheme under section 1 of the 1972 Act is made after the time when this clause comes into force and consultation on the proposed scheme took place before that time, the fact that the amendments made by this clause were not in force when the consultation took place does not affect whether the consultation met the requirements of section 1(3) of that Act. In other words, that consultation is not to be regarded as ineffective just because the amendments were not yet the law when it took place.

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Clause 2 – Limits on value of benefits provided under civil service compensation scheme

11. *Clause 2* imposes caps on the amounts payable to members of staff under the terms of the CSCS. *Subsection (2)* in effect imposes a cap of 12 months' salary in cases of compulsory severance, and 15 months' salary in cases of voluntary severance. The salary figure used is pensionable earnings. This is the rate of earnings immediately before severance on which a person was required to pay (or would have been required to pay) pension contributions under the Principal Civil Service Pension Scheme. *Paragraph (b)* of the definition of 'pensionable earnings' in *subsection (7)* is intended to cover cases such as where a person has opted out of the Principal Civil Service Pension Scheme. *Subsection (8)* covers the treatment of those whose pensionable earnings were restricted or, at the time of severance, were receiving earnings at a reduced rate.

12. The effect of clause 2 will be to reduce the maximum amount payable under the CSCS. An individual currently entitled to 9 months' salary on departure will still receive a sum equivalent to 9 months' salary. However, an individual who under the current compulsory early severance terms might be entitled to (say) 27 months' salary would instead have their payment capped at only 12 months' salary if made compulsorily redundant.

13. *Subsection (4)* provides that, where the cost of providing an early retirement package (for example including an actuarially unreduced pension, or enhanced pension) exceeds the cap, benefits will be paid as a cash lump sum equivalent to the cap rather than as an early retirement package. In such cases pension benefits will be preserved for payment at normal pension age (or may be paid early on an actuarially-adjusted basis in accordance with pension scheme rules). *Subsection (3)* provides that that cost will be determined in accordance with guidance issued by the Minister for the Civil Service.

14. *Subsection (5)* provides that the cap applies where a person is issued with a notice of dismissal after the provision comes into force, or agrees to voluntary severance after that time.

15. *Subsection (10)* excludes from the capping provisions any compensation in lieu of notice and any payments made on early termination of fixed term contracts.

16. *Subsection (11)* confers an order-making power on the Minister for the Civil Service to relax the caps by increasing the number of months specified in *subsection (2)*. That power is subject to affirmative resolution procedures in the House of Commons: see *clause 3(7) and (8)*.

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Clause 3 - Final provisions

17. *Clause 3* provides for clause 2 to expire 12 months after it comes into force. It also grants order-making powers to the Minister to repeal clause 2 before it is due to expire, to extend the date on which clause 2 will expire, and to revive clause 2 after it has expired or been repealed. The powers to extend the expiry date and to revive clause 2 are subject to affirmative resolution procedures in the House of Commons. The power to repeal is subject to negative resolution procedures.

18. *Subsection (5)* provides that the expiry or repeal of clause 2 will not affect the application of clause 2 to any compensation benefits provided in connection with severance occurring before its expiry or repeal.

FINANCIAL EFFECTS

19. The Bill will significantly reduce the costs to Departments of funding exits. It may lead to minor levels of increased administration costs for the CSCS, for example, communication costs, or costs of making severance calculations under clause 2.

PUBLIC SECTOR MANPOWER

20. The Bill may require an increase in staff, on a temporary basis, to calculate the severance payments under clause 2.

SUMMARY OF THE IMPACT ASSESSMENT

21. The Bill will not impact on business, the third sector or the environment. It will not impose costs of more than £5m on the public sector. It has therefore not been subject to an Impact Assessment. The Equality Impact Assessment can be obtained from the Cabinet Office.

COMPATIBILITY WITH THE EUROPEAN CONVENTION ON HUMAN RIGHTS

22. Lord Wallace of Saltaire has stated, pursuant to section 19(1)(a) of the Human Rights Act 1998, that in his view the Bill is compatible with the Convention rights. The Government considers that the amendments of section 2(3) of the 1972 Act and the limits in clause 2 are not an interference with the right to possessions protected by Article 1 of Protocol 1 (A1P1) to the European Convention on Human Rights. A1P1 provides that everyone is entitled to the peaceful enjoyment of his possessions and that no-one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law. First, neither payments under the CSCS nor the rule in section 2(3) are considered to be “possessions”

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within A1P1. Second, nothing in the Bill has effect in relation to cases where a notice of compulsory severance has already been given, or a voluntary severance has already been agreed. So there is no deprivation of or interference with existing possessions (if any).

COMMENCEMENT DATES

23. The Bill is to come into force on the date it receives Royal Assent: see *clause 3(2)*.

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