LEGISLATIVE CONSENT MEMORANDUM
PUBLIC SERVICE PENSIONS BILL

Background

1. This Legislative Consent Memorandum (LCM) has been lodged by John Swinney, Cabinet Secretary for Finance, Employment and Sustainable Growth, under Rule 9B.3.1(a) of the Scottish Parliament’s Standing Orders. The Public Service Pensions Bill was introduced in the House of Commons on 13 September 2012. The latest version of the Bill can be found at:

http://services.parliament.uk/bills/2012-13/publicservicepensions/documents.html

2. No draft legislative consent motion is included in this LCM. That is because the Scottish Government does not intend to lodge a motion in respect of this Bill. Consistent with Rule 9B.3.3(d), the Scottish Government will explain in this LCM why that is the case.

3. Standing orders require that the Scottish Government lodge a Memorandum normally within 2 weeks (in practice ten working days) of a relevant Bill’s introduction at Westminster. Late notification from the UK Government of its intention to include devolved provision in the Public Service Pensions Bill on introduction unfortunately meant that the Scottish Government was unable to meet this deadline.

Content of the Public Service Pensions Bill

4. The main purpose of the Bill is to legislate for a series of reforms to the main public sector pension schemes in the UK to help reduce the ongoing cost of public service pensions. The Bill prescribes a number of elements of scheme design including: the end to current final salary pensions schemes; establishing a link between state pension age and normal pension age; and improving scheme governance arrangements. The reforms must be implemented by April 2015 for the main public sector pension schemes.

5. Whilst Scottish Ministers have, by way of executive devolution orders, responsibility for making regulations for five of the main public sector pension schemes in Scotland (the NHS, teachers, police, fire and local government schemes), primary legislation dealing with these schemes remains reserved to the UK Parliament.

6. Whilst the majority of the Bill provisions deal with the main public sector pension schemes in Scotland, the Bill also contains provisions related to reforming a small number of NDPB pension schemes which are within the devolved competence of the Scottish Parliament. The provisions could conceivably affect six Scottish NDPB pension schemes and a very small number of Scottish judicial posts, mainly those of individual tribunal members.
7. The Bill therefore contains provisions that fall within the legislative competence of the Scottish Parliament and is accordingly a relevant Bill in terms of Rule 9B.1.1 of the Standing Orders.

8. Earlier engagement by the UK Government in drafting the Bill provisions would have allowed time to make amendments prior to the introduction of the Bill to ensure that there was no intrusion into devolved competence. The UK Government has confirmed that, if Scottish Ministers do not wish to support a LCM, then in line with the Sewel Convention, the UK Government will remove any relevant devolved provisions from the Bill.

Provisions within devolved competence

9. The following paragraphs describe the specific provisions making the Bill a relevant one for LCM purposes.

Reform of NDPB pension schemes
10. The Bill contains provision in clause 28 for the closure of certain existing NDPB final salary pension schemes. Although the Bill does not state a target date for these reforms, UK Government officials have advised Scottish Government officials of a target date of April 2018. The employees in the majority of Scottish NDPBs are members of one or other of the main public sector schemes and will therefore already be included within the scope of the provisions dealing with the reform of those schemes. Additionally, in total there are eight NDPB pension schemes falling within the responsibility of Scottish Ministers; six of these Scottish NDPBs (Highlands and Islands Enterprise, Scottish Enterprise, Scottish Legal Aid Board, Highlands and Islands Airports Ltd, David MacBrayne Ltd and Caledonian Maritime Assets Ltd) operate their own pension scheme; while the remaining two (Creative Scotland and Visit Scotland) are part of a UK wide scheme that are likely to be included in the reforms. None of the bodies presently listed in Schedule 10 to the Bill are Scotland-only bodies, but clause 28(7) gives HM Treasury a wide power to amend this Schedule by order and such an order could (under present drafting) add one of the Scottish NDPBs mentioned above to the Schedule.

Reform of Scottish judicial pensions
11. The Bill contains provision for certain Scottish judicial pensions to be included within the reforms. The majority of judicial pensions are, and will continue to remain, reserved. There is, also, a small number (six) of individual judicial pensions responsibility for which is currently devolved (those for Stipendiary Magistrates and certain tribunal chairs).

Consideration

12. Scottish Ministers would have preferred to not be in the position of lodging this LCM. There has been little engagement from the UK Government on the proposed content of the Bill. The letter received from the Chief Secretary to the Treasury on 4 September 2012 requesting the LCM
acknowledges that there has been less time than he would have liked to
discuss this with the Scottish Government. As a result of that short notice, the
Bill was introduced prior to any view being offered by the Scottish
Government as to whether or not it would support the provisions which are
within devolved competence. This lack of consultation and discussion from
the UK Government leaves us unable to support a LCM as we have been
unable to give this the proper consideration needed.

13. Scottish Ministers believe that public sector pensions must be
affordable, sustainable and fair. However, they do not support the prescriptive
approach which has been taken by the UK Government and which is reflected
in this Bill. Given that the main public sector pension schemes are reserved,
Scottish Ministers have limited powers to influence the scheme design and
parameters for negotiation in Scotland. However, the pension schemes which
are operated by Scottish NDPBs remain within the control of Scottish
Ministers and it is for Scottish Ministers to determine any future reforms which
are needed to ensure the ongoing affordability and sustainability of these
schemes. Should Scottish Ministers consider that reforms to these pension
schemes are necessary, these will be taken forward in conjunction with the
organisations themselves based on a full actuarial assessment and, if
necessary, via primary legislation in the Scottish Parliament.

14. The majority of judicial pensions in Scotland are reserved. Only a
small minority of individuals in Scotland are subject to devolved pension
arrangements. Scottish Ministers remain opposed to the UK Government’s
piecemeal approach to public service pension reforms and therefore will not
be supporting an LCM in connection with the judicial pension provisions
either.

Consultation

15. As noted above, there has been no specific consultation by the UK
Government on either of the provisions in the Bill which fall within devolved
competence. The first formal approach was a letter from the Chief Secretary
to the Treasury seeking support for a legislative consent motion only a short
time (one week) before the Bill was introduced.

Financial Implications

16. The UK Government has indicated that the Scottish block grant would
be adjusted to take account of any cost associated with judicial pension
schemes should the schemes not be reformed by April 2015. Given the
limited number of devolved judicial officers involved, any financial impact on
the Scottish Government arising from not meeting that date would be limited.

Conclusion

17. There was minimal formal engagement by the UK Government prior to
the introduction of the Bill. The UK Government has confirmed that if Scottish
Ministers do not wish to support a LCM then it will withdraw the relevant devolved provisions from the Bill.

18. It is the view of the Scottish Government that it will not be forced into a position of agreeing these provisions without proper consultation and therefore it will not be lodging a legislative consent motion and has advised the UK Government accordingly.

Scottish Government
November 2012