EXPLANATORY MEMORANDUM TO

THE PUBLIC SERVICE (CIVIL SERVANTS AND OTHERS) PENSIONS (AMENDMENT) REGULATIONS (NORTHERN IRELAND) 2019

2019 No. 60

1. Introduction

1.1. This Explanatory Memorandum has been prepared by the Department of Finance to accompany the Statutory Rule (details above) which is laid before the Northern Ireland Assembly.

1.2. The Statutory Rule is made under sections 2(1) and 3(1), (2), (3) to the Public Service Pensions (Northern Ireland) Act 2014 and is subject to the negative resolution procedure.

2. Purpose

2.1. To amend the Public Service (Civil Servants and Others) Pensions Regulations (Northern Ireland) 2014 ("the 2014 Regulations") made under the Public Service Pensions (Northern Ireland Act 2014 ("the Act"). and resolve anomalies in relation to the calculation of employee contribution rates and set employee contribution rates from 1st April 2019 onwards.

3. Background

What is being done and why

3.1. Some members were adversely affected when retrospective payments resulted in an increased employee contribution rate for the pay period when the arrears were paid. These Regulations introduce a new process to disregard retrospective pay awards and other arrears payments when calculating the annualised amount of pensionable earnings. The annualised amount of pensionable earnings determines the employee contribution rate payable. These Regulations also address other anomalies which required adjustments in the employee contribution thresholds to better align with the Northern Ireland Civil Service pay and grading structure. They also set employee contribution rates for scheme year 1st April 2019 to 31st March 2020 and provide the facility to set future pensionable earnings bands and contribution percentage rates for subsequent scheme years without a corresponding Scheme Amendment Regulation.

Clarification of pensionable earnings for the purpose of calculating the rate of member contributions and exclusion of arrears from the annualisation calculation

3.2. In Regulation 3(a), 134(4) of the 2014 Regulations is substituted with four sub-paragraphs where substituted paragraph 4(a) clarifies what constitutes pensionable earnings for the purpose of calculating the rate of member contributions and substituted paragraph 4(c) excludes any arrears or retrospective pensionable earnings when determining the annualised rate of pensionable earnings.

Rate of member contributions

3.3. Regulation 3(a) also sets out the member contributions rate for scheme year 1st April 2019 to 31st March 2020 as per the substituted paragraph 4(b) and associated table at Regulation 3(c).

Rate of member contributions for subsequent scheme years

3.4. Regulation 3(a) also provides for member contribution rates to be set from 1st April 2020 onwards without requiring an associated Scheme Amendment Regulation. This is facilitated by substituted paragraph 4(d).

Regulation 3(b)

3.5. Regulation 3(b) deletes the four member contribution tables covering past scheme years from 1st April 2015 to 31st March 2019.

4. Consultation

4.1. Employee representatives were consulted about these Regulations. Those representatives indicated that they had no objections to the amendments being implemented.

5. Equality Impact

5.1. A screening exercise was completed to gauge compliance with section 75 of the Northern Ireland Act 1998. The changes being implemented are a revised policy to address the impact of retrospective pay awards and other arrears payments on employee pension contributions; and to address anomalies requiring adjustments in employee pension contribution thresholds. The proposals are beneficial to all members of the NICS pension scheme arrangements regardless of Section 75 equality grouping.

6. Regulatory Impact

6.1. These Regulations impose no costs on business, charities, social economy enterprises or the voluntary sector. A Regulatory Impact Assessment is not considered necessary.

7. Financial Implications

7.1. There are no financial implications for the Department other than a minor adjustment to the scheme yield. There is no financial impact to the NI Block or employer costs. Furthermore contributions for pension provision are met by the employee/employer.

8. Section 24 of the Northern Ireland Act 1998

8.1. It is the view of the Department that the Regulations are compatible with section 24 of the Northern Ireland Act 1998.

9. EU Implications

9.1. Not applicable.

10. Parity or Replicatory Measure

10.1. It is normal practice that pensions for civil servants in Northern Ireland maintain parity with the Home Civil Service in Great Britain. However on this occasion due to the anomalies and circumstances specific to Northern Ireland (such as delays in implementing pay awards), a different approach to member contributions is necessary.

11. Additional Information

11.1. Further information regarding the changes to employee contributions can be found in the Employee Pension Notice dated 14th March 2019 that was issued to all scheme members. The notice can be accessed on the Civil Service Pensions (NI) website or via the link below:

https://www.finance-ni.gov.uk/publications/employee-pension-notice-employee-contribution-rates-1-april-2019-0

12. 21 Day Rule

12.1. Employee contribution rates are legislated for under the Public Service (Civil Servants and Others) Pensions Regulations (Northern Ireland). As the current rates thresholds and contribution rates are set in legislation up to 31 March 2019, the Department must legislate for the continued deduction of employee contributions from members' pensionable earnings from 1 April 2019. The Department of Finance is breaching the '21 day rule' in order to ensure regulations are in place by 1 April 2019. The delay in making these regulations is outside the control of the Department of Finance as set out below.

12.2 On 30 January 2019, HM Treasury announced a pause in the operation of the cost cap mechanism in public service pension scheme valuations in response to Court of Appeal judg~~e~~ment in the case of '*Lord Chancellor v McCloud and other judg~~e~~ments*' in December 2018. This ruled that the transitional protections provided to some members as part of the 2015 reforms were unlawfully discriminatory on basis of age. The Government is appealing the Appeal Court's judgment.

12.2 The reforms introduced under the Public Service Pensions Act (Northern Ireland) 2014 broadly replicate those introduced under the equivalent Westminster Act. The same uncertainty now exists in relation to the potential impact of this Court judg~~e~~ment for the wider reforms introduced in the NI schemes. Given this uncertainty the Department of Finance has adopted a similar approach which will temporarily pause the cost control mechanism as currently provided for in Northern Ireland valuation and cost control directions. Amendments to the current Northern Ireland directions were made on 6 March 2019.

12.3 The Government Actuary, following the Department of Finance amendments to the Northern Ireland Directions, have now finalised the NICS Valuation on 11 March 2019 and on receipt of DSO scrutiny of the legislative amendments to employee contributions amendments the Department of Finance is making the amendment regulations.