

## EXPLANATORY MEMORANDUM TO

### **THE JUDICIAL PENSIONS (AMENDMENT) REGULATIONS (NORTHERN IRELAND) 2020**

#### **S.R. 2020 No 10**

#### **1. Introduction**

- 1.1. This Explanatory Memorandum has been prepared by the Department of Justice (DoJ) to accompany the Statutory Rule (details above) which is laid before the Northern Ireland Assembly.
- 1.2. The Statutory Rule is made under the Public Service Pensions Act (Northern Ireland) 2014 (the Act) and is subject to the negative resolution procedure.
- 1.3. The Assembly procedure for making these Regulations would ordinarily be by the draft affirmative procedure. However, the Public Service Pensions (Northern Ireland) Act 2014 under which the regulations are made allows the use of the negative procedure if the Pension Board for that scheme has stated that it considers the Regulations to be “minor or wholly beneficial”. The Department has obtained the agreement of the Northern Ireland Judicial Pension Scheme Pension Board that the proposed amending regulations are “minor or wholly beneficial”. Consequently, the Department intends to make the amending Regulations for the extension of member contribution rates and earnings thresholds beyond March 2020, by the negative procedure.

#### **2. Purpose**

- 2.1. The Statutory Rule will amend the Judicial Pensions Regulations (Northern Ireland) 2015 (S.R. 2015 No. 76) by extending the current contribution rates applicable in the Northern Ireland Judicial Pension scheme year ending 31 March 2020 beyond this date and uprating the earning thresholds under £150,001 per annum of the member contribution rate structure in line with the Consumer Price Index (CPI) on and from the 1 April 2020 and each year thereafter.

#### **3. Background**

- 3.1. The Judicial Pensions Regulations (Northern Ireland) 2015 (“the 2015 Regulations”) make provision for the Northern Ireland Judicial Pension Scheme (NIJPS). The NIJPS was established as part of wider public service pension reform which replaced final salary schemes with career-average schemes. DoJ is responsible for the scheme.
- 3.2. NIJPS members are tribunal’s judiciary. There are only 54 members of the NIJPS and the majority are office holders of tribunals sponsored by the Department for Communities and the Department for the Economy. The NIJPS mirrors the equivalent pension scheme for courts judiciary, which is the responsibility of the Ministry of Justice.
- 3.3. When the NIJPS was being developed, the Department of Justice set out the proposed member contribution rates to be fixed until the next valuation

of the NIJPS. When the scheme regulations were made, the member contribution rates were set for a four year period initially. By the end of the four year period, it was expected that rates and earnings thresholds would be reviewed in light of the outcome of an actuarial valuation of the NIJPS. Actuarial valuations of the NIJPS are to be carried out periodically in accordance with Department of Finance Directions. These valuations measure the costs of paying scheme benefits and inform decisions about the future contributions to be paid into the pension scheme so that contributions are commensurate with a pension scheme's liability to pay benefits to members as they fall due.

- 3.4 However, the part of the valuation process that considers cost controls mechanisms has been paused until there is greater certainty about the value of public service pensions from April 2015 onwards. This was a result of the potentially significant but uncertain impact of the Court of Appeal's judgment in the McCloud case in December 2018, in which it was found that the transitional protection offered to some judges as part of public sector pension reforms is unlawfully discriminatory. Ahead of the expiry of the member contributions which were set until 31<sup>st</sup> March 2019 in the 2015 Regulations, the Department of Justice was required to ensure that the NIJPS would continue to operate beyond 1<sup>st</sup> April 2019. Therefore, on 4<sup>th</sup> March 2019, the Department made the Judicial Pensions (Amendment) Regulations (Northern Ireland) 2019 (S.R. 2019 No. 26), which rolled over the existing contribution rates and earning thresholds in the 2015 Regulations until 31<sup>st</sup> March 2020.
- 3.5 Since these Regulations were made in 2019, the Supreme Court has refused the UK government permission to appeal against the decision of the Court of Appeal in McCloud and the matter has been remitted to the Employment Tribunal in England and Wales for consideration of how the unlawful discrimination identified by the Court of Appeal should be remedied.
- 3.6 It is therefore necessary to put in place further interim arrangements for the setting of members contributions until the McCloud remedy is resolved. Failure to make such provision in the 2015 Regulations will have an adverse impact on the effective operation of the scheme, as there would be no statutory basis for setting or collecting member contributions, which would have an adverse on members as they would not be able to accrue benefits under the NIJPS.

#### **4. Consultation**

- 4.1 The provisions of section 22 of the Act require that, before making scheme Regulations, the Department carry out consultations with such persons (or representatives of such persons) as appear to the Department likely to be affected by them. A consultation was carried out between 2 December 2019 and 8 January 2020 with scheme members and judicial associations and bodies. The Department did not receive any responses to this consultation.

## **5. Equality Impact**

- 5.1. The Regulations were screened for impact on equality of opportunity under Section 75 of the Northern Ireland Act 1998 and it was determined that an equality impact assessment was unnecessary. A Rural Needs Impact Assessment was carried out which did not identify any potential differential impact on the social or economic needs of rural communities arising from the proposed amendments.

## **6. Regulatory Impact**

- 6.1. There is no impact on business, charities, social economy enterprises or the voluntary sector. A regulatory impact assessment is not, therefore, necessary.

## **7. Financial Implications**

- 7.1. The proposed amendments are not anticipated to require additional Departmental funding for the NIJPS. However, as current legislative provision for member contribution rates will expire on 31 March 2020, failure to introduce the draft regulations to extend the member contribution rates and earnings thresholds, would result in a lapse in the continuity of arrangements for member contributions and a consequential impact on the operation of the scheme and for members' ability to accrue benefits under the scheme.

## **8. Section 24 of the Northern Ireland Act 1998**

- 8.1. It is the view of the Department that the draft regulations are in compliance with section 24 of the Northern Ireland Act 1998.

## **9. EU Implications**

- 9.1. Not applicable.

## **10. Parity or Replicatory Measure**

- 10.1. The Regulations replicate those made by the Ministry of Justice in relation to its equivalent pension's scheme for the courts judiciary.

## **11. Additional Information**

- 11.1. Not applicable.