

EXPLANATORY MEMORANDUM
TO THE
POLICE PENSIONS (AMENDMENT) REGULATIONS (NORTHERN IRELAND)
2022

SR 2022 No. 148

Matters of special interest to the Examiner of Statutory Rules

The Department of Justice apologises to the Examiner that this rule, which comes into operation on 30 March 2022, is laid in breach of the 21-day rule.

The rule could not have been made and laid sooner because it is dependent on the Public Service Pensions and Judicial Offices Act 2022 (“the Act”), which received Royal Assent on 10th March 2022. Chapter 4 of Part 1 of the Act contains the operative prospective remedy provision necessary to bring to an end the unlawful age discrimination identified in the McCloud judgment (referenced in paragraph 3 below).

In particular, section 88(5)(c) of the Act has the effect of closing the legacy public service pension schemes to future accrual after 31st March 2022. This instrument makes consequential provision for the pension scheme constituted by the Police Pensions Regulations (Northern Ireland) 2015 (“The 2015 Regulations”)¹. This provision must come into force immediately after the legacy pension schemes are closed to future accrual by the Act to ensure legal certainty and fairness. If there is any delay, then there will be a period in which certain members can no longer accrue pension in the legacy scheme but scheme rules would prevent those members from joining the new scheme.

Scheme members have been on notice, through consultation processes, including the Department of Finance consultation document of August 2020, and consultation response document of February 2021, through the introduction of the Bill in the House of Lords on 19th July 2021, and through the scheme-specific consultation referenced in paragraph 4 below, that the commencement date for the prospective remedy would be 1st April 2022. In these circumstances, a breach of the 21-day rule should not give rise to any unfairness.

1. Introduction

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

1.2 The Statutory Rule is made under sections 1(1), (2)(g), 2, 3(1) to (3) and paragraph 7 of Schedule 2 and Schedule 3 to, the Public Service Pension Pensions Act (Northern Ireland) 2014 (the 2014 Act) and is subject to the negative resolution procedure.

1.3 The rule is due to come into operation on 30 March 2022. However, Regulations 3 to 5 and 6(5), 6(6), 6(8) and 6(9) have effect from 1st April 2015.

¹ The Police Pensions Regulations (Northern Ireland) 2015 (No. 113)

2. Purpose of the Instrument

2.1 These Regulations amend the 2015 Regulations² in consequence of provision made by the Public Service Pensions and Judicial Offices Act 2022 and ensure that the prospective part of the McCloud Judgment remedy can be implemented by: -

- closing the 1988² and 2006³ police legacy pension schemes on 31 March 2022; and,
- moving all active members from their respective legacy scheme to the 2015 scheme on 1 April 2022.

2.2 This legislation also includes a number of technical amendments to the 2015 Regulations to improve the operation of the 2015 scheme. This legislation will be enacted by Statutory Rule.

3. Policy Background

3.1 In 2011, the Westminster Government accepted the recommendations of Lord Hutton's report on public service pension reform. In March 2012, the Northern Ireland Executive agreed to mirror this reform and not to adopt a different approach for Northern Ireland schemes.

3.2 In 2015, across the United Kingdom, the career average reforms were applied to all public service pension schemes (including the police scheme). However, following consultation with staff associations, transitional protection arrangements were agreed to allow certain older members to remain in their pre-2015 legacy pension schemes while other members were moved into the reformed scheme on 1 April 2015.

3.3 However, in 2018, the Department of Finance advised the Department of Justice of a legal ruling in England and Wales - (the McCloud judgment). This ruling found that the transitional protection arrangements gave rise to unlawful age discrimination against younger members in the judicial pension scheme and therefore must be remedied. This is known as the McCloud Remedy. In 2019 the Westminster government accepted that public service pension schemes with comparable transitional arrangements would also require a similar solution.

4. Consultation

4.1 As required by section 21 of the 2014 Act, the Department of Justice has consulted the Northern Ireland Policing Board, the Police Association of Northern Ireland, the Northern Ireland Retired Police Officers Association and the Chief Constable of the Police Service of Northern Ireland. Also consulted were the Police Scheme Advisory Boards for both Northern Ireland and England and Wales.

4.2 In accordance with section 3(5) of that Act the Department of Justice has obtained the consent of the Department of Finance.

4.3 The draft regulations were issued for consultation from 30 November 2021 to 24 January 2022.

² The 1988 scheme means the pension scheme constituted by the Royal Ulster Constabulary Pensions Regulations 1988 (No. 374).

³ The 2006 scheme means the pension scheme constituted by the Police Pension (Northern Ireland) Regulations 2009 (No. 79).

5. Equality Impact

5.1. Consideration has been given to compliance with section 75 of the Northern Ireland Act 1988, no significant implications for equality issues have been identified by the Department.

6. Regulatory Impact

6.1 The Department does not consider that there is a need for a regulatory impact assessment for this instrument as it has no impact on businesses, charities or voluntary bodies.

7. Financial Implications

7.1 The Police Pensions (Amendment) Regulations (Northern Ireland) 2022 facilitate the removal of the age discrimination in the police pension scheme as identified by the McCloud judgment. Failure to implement the prospective regulations by 1 April 2022 is estimated at a further £20m for each year delayed.

7.2 Any such delay may be repercussive and also risks legal challenge from other UK government departments/schemes.

8. Section 24 of the Northern Ireland Act 1998

8.1 The proposed Rules are considered compatible with section 24 of the Northern Ireland Act 1998.

9. EU Implications

9.1 Not applicable.

10. Parity or Replicatory Measures

10.1 Similar legislation is being introduced on 1 April 2022 simultaneously in Scotland, England and Wales.

11. Additional Information

11.1 These regulations are made to support the McCloud Prospective Remedy. The Department of Justice plans to bring forward further regulations to address the Retrospective aspects due to be implemented by October 2023.