

EXPLANATORY MEMORANDUM TO
THE JUDICIAL PENSIONS (REMEDIABLE SERVICE ETC)
REGULATIONS (NORTHERN IRELAND) 2023

S.R. 2023 No. 107

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 2014 Act) and the Public Service Pensions and Judicial Offices Act 2022 (the 2022 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 2014 Act 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 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). The Judicial Pensions Regulations (Northern Ireland) 2015 (“the 2015 Regulations”) created a new Northern Ireland Judicial Pension Scheme (NIJPS) for eligible devolved judicial officer holders in Northern Ireland (tribunals judiciary) which came into effect on 1 April 2015 (“the 2015 Scheme”). The NIJPS has since been closed to further accruals from 1 April 2022 as a UK wide pension scheme for eligible members of the judiciary being set up as a result of the Public Service Pensions and Judicial Offices Act 2022 (“the 2022 Act”). The 2022 Act effected reforms to judicial pensions across the UK by providing remedies for the age discrimination (identified in *McCloud v Ministry of Justice*) which is present in all the 2015 judicial pension schemes in the UK, including the NIJPS. The Statutory Rule makes technical amendments to the 2015 Regulations which are described below in more detail.

3. Background

- 3.1. The 2018 Court of Appeal decision in *McCloud v Ministry of Justice* identified age discrimination in the judicial pension scheme introduced in England and Wales in April 2015, following reform of all public sector schemes across the UK. Older members of the pre-2015 pension scheme were

allowed to either stay in their original scheme or transition across to the new scheme gradually, depending on their age. Whilst younger judges were required to move across to the new 2015 scheme from 1st April 2015.

- 3.2. The NIJPS provides a pension scheme for eligible judicial members of devolved tribunals and mirrors the Ministry of Justice 2015 pension scheme and therefore was affected by the same age discrimination.
- 3.3. The 2022 Act facilitated the creation of the a new UK wide judicial pensions scheme for eligible judges, which has been in place since April 2022. The 2022 Act also contains a specific remedy for affected judges who are active members of the 2015 pension scheme by giving them a choice whether to have accrued benefits in (a) legacy pension schemes that were available for members prior to 2015 or (b) in NIJPS for the period from 1 April 2015 to 1st April 2022. The choice will be made via a formal ‘options’ exercise.
- 3.4. The 2022 Act also contains Regulation-making powers to further effect the *McCloud* remedy. These Regulations address liabilities to and amounts owed by the NIJPS and makes specific provision for individuals who have made transfers in or out of the NIJPS, have partially retired or made an early retirement reduction buy-out. The Regulations also make provision for circumstances where a person has received an immediate detriment payment of *McCloud* being effected. The remedy is also extended to categories of people affected by the discrimination in *McCloud* other than active members of the pension scheme, for example, to dependants of deceased members of the 2015 pension scheme; judges who opted out of the 2015 scheme because they thought it was not beneficial to them; and judges who have entered into pension sharing arrangements with ex-spouses or civil partners.
- 3.5. The provisions of these Regulations seek to maintain parity with amendments that the Ministry of Justice in England and Wales is making to its 2015 judicial pension scheme. It is considered necessary to ensure parity between the schemes so that the devolved tribunals judiciary enjoy the same treatment in relation to pension matters as their Northern Ireland courts colleagues (who are members of the equivalent England and Wales 2015 judicial pension scheme because their remuneration remains a matter for the Lord Chancellor to determine under Schedule 2 of the Northern Ireland Act 1998) as well as their GB judicial colleagues.

4. Consultation

- 4.1 The Department of Justice carried out a targeted consultation on proposals for these draft regulations between 20 January 2023 and 20 March 2023 with pension scheme members, judicial associations and bodies. The Department did not receive any responses.

5. Equality Impact

- 5.1. The Department has concluded that the proposals do not have any adverse impact on any section 75 group and that an equality impact assessment is therefore not necessary.

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 Government Actuary's Department (GAD) has calculated that the costs of the *McCloud* remedy are £0.7 million to the Northern Ireland Judicial Pension Scheme over the period 2015 to 2022. This cost reflects a projected increase in benefit accrual for pension scheme members. This is a provisional estimate because several factors could influence the total costs, including an individuals' pay progression, and the age at which scheme members might retire. GAD also estimates that there is a cost of £0.2 million falling to legacy pension schemes (that is to say, predecessor schemes to the Northern Ireland Judicial Pension Scheme) in relation to Judicial Service Awards, which are lump sums payable under legacy pension schemes only as and when individuals retire. The estimates do not include costs associated with member contributions, income tax reliefs, tax payable on lump sums, annual allowance tax charges or the administrative costs in assisting in the delivery of the options exercise.

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 that the Ministry of Justice are intending to make in relation to its equivalent pension scheme.

11. Additional Information

11.1. Not applicable.