

**EXPLANATORY MEMORANDUM TO**  
**THE PUBLIC SERVICE (CIVIL SERVANTS AND OTHERS) PENSIONS**  
**(REMIABLE SERVICE) REGULATIONS (NORTHERN IRELAND)**

**SR 2023 No. 141**

**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 1(1) and (2)(a), 2(1) (together with paragraph 1 of Schedule 2) and 3(1), (2)(a) (as read with paragraph 13 of Schedule 3) and (c) and (3) of the Public Service Pensions Act (Northern Ireland) 2014 (“the 2014 Act”) and sections 5(1) and (5), 6(1), 7(3), 8(1) and (3), 10(1), 11(1) and (5), 12(1) and (3), 18(1) to (3), (5), (6) and (8), 19(1), (4) and (5), 20(1), (4) and (5), 21, 22(1) and (6), 24(1), 25(1) and (4), 26(1) and (2), 29(1), (7) and (8) and 31(2) and (3) of the Public Service Pensions and Judicial Offices Act 2022 (“PSPJOA 2022”). It is subject to the negative resolution procedure.

**2. Purpose**

- 2.1 The purpose of this instrument is to put in place new Northern Ireland Civil Service (NICS) Pension Scheme Regulations, to fulfil the requirements of PSPJOA 2022. The Regulations implement the 2015 McCloud Remedy for the circa 40,000 affected Northern Ireland Civil Service Pension Scheme members. More detail is set out in sections 6 and 7 of this Explanatory Memorandum.

**3. Matters of special interest to the Examiner of Statutory Rules**

- 3.1 The Department of Finance apologises to the Examiner that this rule, which comes into operation on 1 October 2023, is laid in breach of the 21day rule. The 1 October 2023 deadline date is stipulated in PSPJOA 2022.
- 3.2 This Statutory Rule could not have been made and laid sooner because it was dependent on a final set of draft regulations for Home Civil Service Pension Scheme being cleared for legal scrutiny by lawyers in GB and shared with Departmental officials. The Home Civil Service Pension Scheme laid the equivalent The Public Service (Civil Servants and Others) Pensions (Remediable Service) Regulations 2023 before Parliament on 6 September 2023. The final changes then had to be incorporated into the draft of this Statutory Rule and submitted to the Departmental Solicitor’s Office for further legal scrutiny.

3.3 Scheme members have been on notice, through consultation processes, including the Department of Finance consultation documents of August 2020 and December 2021 with consultation response documents of February 2021 and March 2022 and through the scheme-specific consultation referenced in paragraph 5 below, that the deadline date for the implementing provisions for the retrospective remedy would be 1 October 2023. In these circumstances, a breach of the 21-day rule should not give rise to any unfairness.

#### 4. Background

- 4.1 Between 2014 and 2016, new ('reformed') public service pension schemes were established by regulations made under the Public Service Pensions Act (Northern Ireland) 2014 ('the 2014 Act'). The Public Service (Civil Servants and Others) Pensions Regulations (Northern Ireland) 2014 (S.R. 2014 No. 290) established the reformed NICS Pension Scheme, 'alpha'. These Regulations are new pension scheme regulations made under the PSPA 2014 and in accordance with PSPJOA 2022.
- 4.2 Transitional arrangements as part of the 2014 to 2016 reforms allowed pension scheme members within 10 years of retirement to remain in their pre-existing pension ('legacy') schemes. The NICS legacy scheme is the Principal Civil Service Pension Scheme (Northern Ireland) ('PCSPS(NI)') with the sections Classic, Premium (which includes Classic Plus) and Nuvos.
- 4.3 In December 2018, the Court of Appeal in *Lord Chancellor and Secretary of State for Justice and another v McCloud, Secretary of State for the Home Department and others v Sargeant and others* [2018] EWCA Civ 2844 (the 'McCloud judgment') found that transitional arrangements provided for in relation to the reformed judicial and firefighters' pension schemes discriminated against younger pension scheme members, also giving rise to indirect sex and race discrimination. On 27 June 2019, the Supreme Court denied the Government permission to appeal the Court of Appeal's judgment.
- 4.4 The Government subsequently committed to apply a remedy across all affected public service pension schemes created under the Public Service Pensions Act 2013 and for Northern Ireland the 2014 Act, legislating to this effect with the PSPJOA 2022. Although pensions in Northern Ireland are a devolved matter, public service schemes here incorporate the same transitional protection arrangements as the schemes in Great Britain and the implications of the Court of Appeal decision are such that all schemes must be treated as affected and so require to be remedied.
- 4.5 For the NICS Pension Scheme, the first stage of the remedy was to close the legacy (PCSPS(NI)) sections to future accrual and place all active NICS Pension Scheme members into alpha from 1 April 2022.
- 4.6 For the second, retrospective stage of the remedy, the PSPJOA 2022 makes provision to put right the discrimination that occurred between 1 April 2015 when transitional arrangements under the 2014 Act first began, and 31 March 2022 (the 'remedy period'). The PSPJOA 2022 does this by returning ('rolling

back’) members who were placed in or transitioned into alpha on or after 1 April 2015, to the legacy scheme section that members otherwise could have been placed in for their pensionable service during the remedy period (‘remediable service’).

- 4.7 This Statutory Rule provides for affected NICS Pension Scheme members to make a choice for their remediable service, between receiving legacy PCS(PS(NI)) scheme benefits or reformed alpha scheme benefits payable from the legacy scheme, in accordance with provisions under the PSPJOA 2022.
- 4.8 On 15 July 2019, the Chief Secretary to the Treasury made a written ministerial statement setting out that the Government considered that the McCloud judgment had implications for **all** reformed public service pension schemes. The statement explained that the Government planned to make proposals to remedy the discrimination across **all** affected schemes.
- 4.9 The Department of Finance carried out a public consultation from 19 August to 18 November 2020. for the remedy solution and their response document published in 2021 set out that schemes would offer scheme members a choice between receiving legacy or reformed scheme benefits for their remediable service. It was confirmed that legacy schemes would close on 31 March 2022 and that affected members would be given a choice of which pension benefits they wish to receive when those benefits are due to come into payment (the ‘deferred choice underpin’ or ‘DCU’ option). For members with remediable service benefits already in payment, the choice would be given as soon as possible after the necessary legislative changes were in place.
- 4.10 There is no alternative to laying regulations that can be explored to remedy the discrimination. Existing legacy and reformed scheme rules are found in regulations, so further regulations are required for this purpose. In 2022 HM Treasury laid the PSPJOA 2022, which provides the framework and legislative powers for public service pension schemes to implement the remedy, by 1 October 2023.
- 4.11 The policy objectives set out in the PSPJOA 2022 that are relevant to this rule are:
  - a) to address the discrimination that arose when public service pension schemes were closed to certain members between 2014 and 2016; and
  - b) deliver changes to public service pension schemes to ensure that all eligible public service workers have access to high quality defined benefit schemes on a fair and equal basis.
- 4.12 This rule enables completion of the second stage of the remedy, the retrospective stage, which aims to put affected scheme members back in the position that they would have been in, had the discrimination identified in the McCloud judgment not occurred. It does this by reversing the age-discriminatory transitional protection policy that placed or transitioned younger scheme members into alpha between 1 April 2015 and 31 March 2022.

- 4.13 The policy underlying the first step of the retrospective remedy, rollback, is to give a consistent starting point for the practical application of the second step of the retrospective remedy. The second step taken forward by this rule, effective from 1 October 2023, allows for members to choose whether they would like to receive remediable service benefits under their legacy or reformed pension scheme.
- 4.14 Remedial action may be necessary for members who built up NICS Pension Scheme benefits during the remedy period. This includes having put benefits into payment, or the completion of a relevant action that may affect the remediable service benefits they may be entitled to. Examples of relevant actions could be the purchase of added pension, transferring between schemes or the implementation of a Pension Sharing Order ('PSO').

### ***Explanations***

#### ***The Remediable Service Statement***

- 4.15 This rule provides for when and how members or their surviving beneficiaries are to be informed of the remediable service benefit choices available to them using a Remediable Service Statement ('RSS'), as required by the PSPJOA 2022. Under this rule the Scheme Manager must provide an RSS to all members with remediable service, setting out the benefits available for the remedy period under the relevant PCSPS(NI) section and the equivalent alpha benefits. Further requirements about the content and timing for issue of the RSS are contained in the PSPJOA 2022 and the Public Service Pensions (Exercise of Powers, Compensation and Information) Directions (Northern Ireland) 2023.

#### ***Decisions about the treatment of remediable service: Opted-out service elections***

- 4.16 This rule provides for members who opted out of the PCSPS(NI) to avoid joining or remaining in alpha, to apply to have their remediable service reinstated in the PCSPS(NI). The Regulations cover the treatment of a person's opted-out service in the remedy period and set out the criteria and conditions that need to be met to reinstate the opted-out service so it may be treated as remediable service. An RSS must be issued before an opted-out service election can be made setting out the terms and conditions that apply.

#### ***Immediate choice decision for alpha or PCSPS(NI) benefits***

- 4.17 The PSPJOA 2022 provides that this rule must make provision for the NICS Pension Scheme to operate the Immediate and Deferred Choice elections for alpha equivalent benefits or PCSPS(NI) pension benefits for the remedy period. This rule also makes provisions for the time limits for making an election and provisions for when an election is not made by a member. Default election provisions set out the circumstances when the Scheme Manager will make an election on behalf of a member including how the benefits payable will be determined.
- 4.18 This rule includes a framework to identify an eligible decision-maker where a member has died before making their Immediate or Deferred Choice decision.

In most cases that decision-maker would be the surviving adult (the member's spouse, civil partner or surviving qualifying partner). There are some circumstances where there may be multiple beneficiaries and the schedule sets out who the eligible decision-maker should be. Where no decision-maker can be agreed or identified, the Scheme Manager will become the eligible decision-maker.

***Deferred choice decision for alpha or PCSPS(NI) benefits***

- 4.19 This rule includes provision for active and deferred members of the scheme to be given a Deferred Choice (at the point of retirement) to take PCSPS(NI) or alpha equivalent scheme benefits for the remedy period when they come to retire. This rule integrates the DCU decision making process into the overall retirement process.
- 4.20 This rule makes provision for circumstances such as where a member dies before making their decision or dies after making their decision but before benefits relating to that decision have been put into payment. The provisions allow for the payment of death benefits to be paid in line with the member's choice of scheme if a decision had been made, or where no choice has been made for an eligible decision-maker to make a choice. In both instances an RSS will be issued to an eligible decision-maker. Where the benefits are in payment the member's election can be revoked by the eligible decision-maker to make a choice that reflects the change of circumstances.
- 4.21 This rule allows for the Scheme Manager to pay interim scheme benefits in relation to remediable service, in specific circumstances, until an RSS can be issued and a DCU decision made. This may happen where the scheme is not in possession of information from another scheme in respect of transferred in remediable service. Corrections to benefits paid will be made in accordance with the member's choice as appropriate.

***Provision about divorce and dissolution arrangements***

- 4.22 This rule makes provision for the adjustment of certain non-core pension benefits after rollback. Where a member's remediable service has been used to determine the value of pension benefits for divorce or dissolution purposes the remedy could affect the implemented PSO and will need to be taken into account. This will be done automatically by the scheme administrator and the effects of the adjustments will be notified to those concerned.
- 4.23 This rule protects the pension credit member's benefits and prevents them from being unfavourably affected by an ex-spouse's Immediate or DCU decision. Pensions created by a divorce and given to ex-spouses known as pension credit benefits are not treated as remediable service and they have no remedy rights attached to them. This is because only members of the reformed scheme who were subject to the discrimination between 2015 and 2022 are eligible for remedy. Pension credit members are not scheme members for remedy purposes as they have not contributed to the scheme.

***Member Voluntary Contributions***

- 4.24 This rule makes provision about the treatment of rights from the purchase of additional pension by member voluntary contributions, paid by lump sum or periodical contributions, which began during the remedy period. Added pension purchased in alpha will be treated as added pension as if it had always been purchased in the PCSPS(NI), with removal of those rights from alpha. Following a member's Immediate or Deferred choice, added pension rights will follow that choice.
- 4.25 This rule makes provision about member voluntary contribution rights to Effective Pension Age ('EPA') purchased in alpha, to be treated as PCSPS(NI) additional pension or replaced by a refund of contributions paid in the form of compensation and the rights removed.
- 4.26 Provisions also allow members who did not have the opportunity to elect to purchase rights to EPA in respect of remediable service to do so retrospectively, where appropriate.

***Transfer of rights in or out of the scheme***

- 4.27 This rule makes provisions for the adjustment of pension rights transferred in and out of the NICS pension arrangements that include remediable service.
- 4.28 This rule provides for the recalculation of cash equivalent transfer values ('CETVs') and transfers made under the Club arrangements that have taken place before 1 October 2023. The transfer Club is mainly for members transferring between broadly equivalent public service pension schemes.
- 4.29 This rule also requires the Scheme Manager to provide an RSS to a person who has transferred rights out of the scheme in respect of remediable service. The RSS will inform the member of the higher value of the CETV that is determined from using PCSPS(NI) terms or alpha terms for their remediable service. The PSPJOA 2022 provides that the highest value must be used for members transferring out of the scheme.
- 4.30 This rule includes provisions for the calculation or re-calculation of a transfer value and the making and accepting of additional payments in relation to the transfer value of rights secured for remediable service. Provisions allow for re-calculations of CETVs made before 1 October 2023, to allow for retrospective action to transfers that were carried out before the implementation of this rule. This rule also puts in place provisions for the calculation of transfer values after this rule is in place.
- 4.31 This rule allows for service transferred into the NICS Pension Scheme during the remedy period, to be treated as service being transferred into the PCSPS(NI). Where a member makes a choice for alpha scheme benefits for the remedy period, regulations include provision to vary the value of the rights to be treated as alpha rights.

***Other Provisions of interest***

- 4.32 This rule provides for the reassessment of ill-health retirement applications which may have been treated differently if they had originally been assessed in a member's alternative NICS Pension Scheme.
- 4.33 This rule includes provision to protect the amount of certain child pensions in payment before 1 October 2023 from being reduced as result of the PSPJOA 2022 or these Regulations.
- 4.34 This rule includes provisions allowing members who would, but for the transitional protection, have been able to aggregate a previous period of pensionable service in the PCSPS(NI) with current service. An aggregation of benefits option is usually required to be made within 12 months of a member re-joining the PCSPS(NI). This provision is included to allow members this choice with their remedy choice, so they do not miss out on this option.
- 4.35 This rule includes provisions applicable to a person who has already obtained a remedy for their remediable service. For the purposes of PSPJOA 2022 and these Regulations they are treated as if they were an Immediate Choice Member who elected to receive PCSPS(NI) benefits in relation to their remediable service.
- 4.36 This rule makes provisions about any amounts ('relevant amounts') owed to or by a person as a result of PSPJOA 2022 or these Regulations where operation of the remedy results in an over or under payment of benefits already paid. These powers could be used where a tapered member has their mixed service benefits adjusted to either PCSPS(NI) or alpha benefits as they are not allowed to retain mixed benefits. Mixed service benefits are made up of both PCSPS(NI) and alpha service during the remedy period.
- 4.37 This rule includes provision for where the deadline has passed for a member to make a mandatory Scheme Pays election, before they have been advised of any changes to their annual allowance position which may result in tax charges (due to the retrospective remedy). The scheme will therefore accept a voluntary Scheme Pays election.
- 4.38 This rule will allow the Scheme Manager discretion to reduce or waive relevant amounts in certain circumstances as set out in the Public Service Pensions (Exercise of Powers, Compensation and Information) Directions (Northern Ireland) 2023.

## **5. Consultation outcome**

- 5.1 The 2014 Act provides that before making scheme regulations the responsible authority must consult such persons (or representatives of such persons) as appear to the responsible authority likely to be affected by them. The responsible authority for the NICS Pension Scheme is the Department of Finance. For this Statutory Rule, a public written consultation was used to reach out to a wide range of stakeholders to gather opinions on the draft proposals. The consultation ran from 3 April 2023 to 2 June 2023. Before and during the consultation period, the Department ran a number of engagement sessions with representatives from Trade Unions who represent NICS

- Pension Scheme members to provide the opportunity to directly engage with them on the proposed remedy as set out in the consultation.
- 5.2 The Department received 98 responses in total from scheme members, trade unions and other member representative groups which in some way addressed the consultation questions. These consisted of 92 responses from individuals and 6 responses from organisations. The remedy population is circa 40,000 members, so the responses represent less than 0.5% of this population.
  - 5.3 Responses to the consultation were generally supportive of the policy and scheme regulations however many of the responses sought clarity on future processes and communication and engagement methods to be used and did not challenge the proposed regulations. The minor challenges received were in respect of policies provided by the PSPJOA 2022 (such as around retention of PCSPS(NI) benefits until retirement) so not in the scope of the consultation. More information was provided to members in the consultation response.
  - 5.4 The analysis and information provided in the consultation response was in some part provided outside of the stated purpose of the consultation. The consultation respondents raised a number of helpful points, and the Department will use the feedback to inform the implementation of the retrospective remedy.
  - 5.5 After careful consideration of the responses received, the Department will continue with the changes contained in the Statutory Rule. The Department's consultation response was issued on 20 September 2023. The full outcome report can be seen on the CSP(NI) website at: <https://www.finance-ni.gov.uk/consultations/nics-retrospective-remedy>

## **6. Equality Impact**

- 6.1 An Equality Screening Exercise was conducted on 28 March 2023 and published alongside the consultation. It is the view of the Department that any indirect effects would be incidental to the policy imperative to remove unlawful discrimination identified by the Courts and could depend on a variety of external factors and choices, which can affect any individual's pension outcomes, including length of employment; salary levels; career choice, and personal financial decisions. This rule is addressing the direct age discrimination and the indirect sex and race discrimination introduced by transitional protections that formed part of the 2015 public service pension scheme reforms.
- 6.2 A full Impact Assessment has not been prepared for this rule because this rule follows the PSPJOA 2022, for which HM Treasury produced an impact assessment that can be seen using this link: [https://www.legislation.gov.uk/ukpga/2022/7/pdfs/ukpgaod\\_20220007\\_en.pdf](https://www.legislation.gov.uk/ukpga/2022/7/pdfs/ukpgaod_20220007_en.pdf)

## **7. Regulatory Impact**



7.1 These Regulations do not apply or impose any costs on business, charities, social economy enterprises or the voluntary sector. A Regulatory Impact Assessment is not considered necessary.

## **8. Regulating small business**

8.1 The legislation does not apply to activities that are undertaken by small businesses.

## **9. Financial Implications**

9.1 The costs of the McCloud remedy have been factored into scheme actuarial valuations; McCloud remedy costs associated with financial loss compensation and corrective payments, made under the PSPJOA 2022, will be funded within Annually Managed Expenditure (AME) and will not impact Departmental Expenditure Limit (DEL) budgets. The scheme actuarial valuation reports can be found here: <https://www.finance-ni.gov.uk/articles/northern-ireland-civil-service-pension-scheme-valuations>

9.2 This rule does not impose an additional cost on public sector bodies or the taxpayer, rather implement what has already been costed and accounted for during the McCloud litigation and passage of the PSPJOA 2022.

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

10.1 The Departmental Solicitor's Office has advised that the Regulations are within the scope of Section 24 of the Northern Ireland Act 1998 and are therefore within competence.

## **11. EU Implications**

11.1 This rule does not relate to withdrawal from the European Union/trigger the statement requirements under the European Union (Withdrawal) Act.

## **12. Parity or Replicatory Measure**

12.1 It is normal practice to introduce the same pension and compensation provision for civil servants in Northern Ireland as exists for the Home Civil Service in Great Britain. Therefore, the Regulations replicate the relevant equivalent legislation for the implementation of the retrospective remedy for the Civil Service Pension Scheme in Great Britain, namely "The Public Service (Civil Servants and Others) Pensions (Remediable Service) Regulations 2023".

## **13. Additional Information**

13.1 These Regulations will be periodically monitored by the Department of Finance as Scheme Manager and amended as necessary. Peter Philip, Head of Civil Service Pensions Policy, Legislation & Communications Branch (telephone 02871 310706 or email [peter.philip@finance-ni.gov.uk](mailto:peter.philip@finance-ni.gov.uk)) can be contacted with any queries regarding the Regulations.