

PUBLIC SERVICE PENSIONS ACT 2013

EXPLANATORY NOTES

COMMENTARY ON SECTIONS AND SCHEDULES

Procedure for scheme regulations

Section 21: Consultation

135. **Section 21** obliges the responsible authority to consult those likely to be affected before making or changing scheme regulations. The current procedures for making changes to current public service pension schemes vary from scheme to scheme. The section provides a standard requirement for those responsible for making schemes to consult before doing so.
136. **Subsection (1)** requires the responsible authority to consult the persons (or their representatives) who it considers are likely to be affected by the proposed change before any change is made.
137. **Subsection (2)** requires the responsible authority to publish a list of those people and organisations that the authority anticipates would normally be consulted as part of the obligation under subsection (1). This list must be kept up to date.
138. The purpose of the list is to make the consultation process more transparent by providing an indication of the organisations and people with whom consultations within a particular scheme are likely to be conducted.
139. **Subsection (3)** allows any consultation that took place before the commencement of this section to satisfy the requirements of subsection (1). It is a permissive rather than mandatory provision. It means that schemes do not need to wait until this section is brought into force before they consult on making scheme regulations, because a consultation carried out before the section comes into force will satisfy its requirements (provided it is compliant in all other respects).

Section 22: Procedure for protected elements

140. The Chief Secretary to the Treasury said in a statement to the House of Commons on 20th December 2011 that the reforms legislated for under this Act are designed to last for at least 25 years. He announced his intention to include provisions in primary legislation that will ensure a high hurdle is set for future governments to change the design of the schemes. The enhanced consultation and report procedure for changes to protected elements of a scheme for a period of 25 years are the Government's way of giving effect to that commitment.
141. **Subsection (1)** sets out that the process in subsections (2) to (4) is to be followed in the event that the responsible authority wishes to make changes to the new public service pension schemes that impact on certain elements (the "protected elements") which have been identified for enhanced protection. Those elements are protected from modification until 31st March 2040 (the "protected period") unless the process is followed. "Protected elements" and "protected period" are defined in **subsection (5)**.

*These notes refer to the Public Service Pensions Act 2013
(c.25) which received Royal Assent on 25 April 2013*

142. *Subsections (2) to (4)* set out the two parts of the required process. Where a change is proposed to the protected elements during the protected period, the responsible authority must consult those who appear likely to be affected with a view to reaching agreement with them and must lay a report before the appropriate legislature (defined in subsection (5)). The requirement to consult with a view to reaching agreement is a higher standard than applies under section 21.
143. The responsible authority proposing the change must consult those who appear likely to be affected, either directly or through their representatives (subsection (3)).
144. Subsection (4) provides that the report to the appropriate legislature must say why a modification to a protected element is proposed within the protected period, having regard to the general desirability of not making such changes in that period.
145. *Subsection (6)* creates an exception for changes to the protected elements that are caused by the operation of the employer cost cap under section 12 (see section 12(6), which envisages consultation resulting in an agreement to implement such changes, unless agreement cannot be reached and a default change is applied). *Subsection (7)* provides that where section 22 applies, there is no requirement to consult under section 21 (this is to prevent duplication of the requirement to consult set out in that section).

Section 23: Procedure for retrospective provision

146. **Section 23** provides a procedure to be followed when retrospective provisions are included within scheme regulations proposed by the relevant authority.
147. *Subsection (1)* provides that where such retrospective provisions appear to the responsible authority to have significant adverse effects in relation to the pension payable to or in respect of members of the scheme, the authority must first obtain the consent of those who appear likely to be affected, either directly or through their representatives (*subsection (3)*).
148. *Subsection (2)* provides that where the retrospective provisions appear to the responsible authority to have significant adverse effects in any way not covered by subsection (1) in relation to the members of the scheme (for example, a serious adverse effect on injury benefits as opposed to pension benefits), the authority must first consult those who appear likely to be affected, either directly or through their representatives, with a view to reaching agreement.
149. *Subsection (4)* requires that where subsection (1) or (2) applies the responsible authority must lay a report before the appropriate legislature (as defined in section 22(5)).
150. *Subsection (5)* provides that where this section applies, there is no requirement to consult under section 21 (this is to prevent duplication of the requirement to consult). The requirement for consent and to consult with a view to reaching agreement is a higher standard than applies under section 21.

Section 24: Other procedure

151. **Section 24** sets out the legislative procedures which apply to the making of scheme regulations. A higher level of parliamentary scrutiny is required in each case if scheme regulations are used to amend primary legislation or to make retrospective amendments that appear to the responsible authority to have significant adverse effects in relation to members of schemes.
152. *Subsection (1)* provides that scheme regulations are subject to the affirmative procedure (see section 38(2)) if they amend primary legislation; make retrospective provision that may adversely affect members of schemes to a significant extent; or are scheme regulations relating to the judiciary (unless the pension board for the judiciary scheme has stated that it considers the regulations to be minor or beneficial).

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153. *Subsection (2)* provides that in all other cases scheme regulations are subject to the negative procedure (see section 38(3)).
154. *Subsection (3)* provides that when scheme regulations subject to the negative procedure are combined with regulations subject to the affirmative procedure, the combined regulations are subject to the affirmative procedure.