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EXPLANATORY NOTES

Public Service Pensions and Judicial Offices Act 2022

Chapter 7

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PUBLIC SERVICE PENSIONS AND JUDICIAL OFFICES ACT 2022

EXPLANATORY NOTES

What these notes do

These Explanatory Notes relate to the Public Service Pensions and Judicial Offices Act 2022 which received Royal Assent on 10 March 2022 (c. 7).

- These Explanatory Notes have been prepared by Her Majesty's Treasury, the Ministry of Justice, and the Department for Levelling Up, Housing & Communities in order to assist the reader in understanding the Act. They do not form part of the Act and have not been endorsed by Parliament.

- These Explanatory Notes explain what each part of the Act will mean in practice; provide background information on the development of policy; and provide additional information on how the Act will affect existing legislation in this area.

- These Explanatory Notes might best be read alongside the Act. They are not, and are not intended to be, a comprehensive description of the Act.

Table of Contents

These Explanatory Notes refer to the Public Service Pensions and Judicial Offices Act 2022 which received Royal Assent on 10 March 2022 (c. 7)

Overview of the Act

1 The Public Service Pensions and Judicial Offices Act 2022 ("the Act") includes measures that:

a. Address discrimination that arose when existing public service pension schemes were closed to certain members between 2014 and 2016;

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;

c. Ensure there are no reductions to members' benefits following completion of the cost control element of the 2016 valuations, and that the cost control mechanism will be reformed ahead of the completion of the 2020 valuations;

d. Improve the terms for judicial resourcing to support the effective functioning of the judiciary, to meet future demands; and

e. Confer powers upon the Treasury to establish new pension schemes to house the pension liabilities of UK Asset Resolution (UKAR) Limited.

2 When reformed public service pension schemes were introduced in 2014/2015 (in each case, a "new scheme") the Government agreed, following discussions with trade unions, to allow active members of pre-existing public service pension schemes (in each case, a "legacy scheme") who were close to retirement to remain in those schemes, rather than requiring them to start to accrue pension benefits in a new scheme. This was called transitional protection.

3 Following a judgment by the Court of Appeal that found transitional protection to be unlawfully discriminatory in the schemes for the judiciary and firefighters, the Government consulted on proposals to allow all eligible members of the main public service pension schemes a choice between legacy and new scheme benefits in respect of any pensionable service between 1 April 2015 and 31 March 2022, so that they are able to opt for the benefits (new scheme or legacy scheme) of the greatest value to them. Eligible active and deferred members of the main public service pension schemes will be able to make this choice close to the time that their pension benefits are paid when it is clearer which option is most beneficial for them. Some members with relevant service are already in receipt of pension benefits in relation to the affected period. This group will be able to choose which benefits they wish to receive in relation to their affected service once all relevant legislation comes into force and where there is a change in entitlement as a result; any change will apply retrospectively.

4 Separate arrangements are being made in the local government pension schemes because the transitional arrangements in those schemes were made in a different way. Judicial scheme members will make an immediate choice given the unique nature of their legacy schemes. All members of the public service schemes, regardless of age or joining date, will accrue benefits in the relevant new scheme from 1 April 2022. This aims to ensure fair and equal treatment going forward.

5 This Act recommits to the objectives underpinning the 2015 reforms: fairness between lower and higher earners; value for the taxpayer; and ensuring a sustainable, affordable approach is taken to public service pensions. Measures in the Act deliver changes that will ensure greater fairness in future public service pension provision and provide members with greater certainty about their benefit entitlement.

6 Taken together, the Act: ensures that public service pension benefits are affordable, sustainable and form part of a generous remuneration package for public servants; brings forward bespoke measures required to support the judiciary now and in the future; and confers the necessary powers on the Treasury to establish new pension schemes for the pension liabilities of UKAR.

Policy background

Public service pensions reform and the Court of Appeal's judgment

7 In 2010, the Chancellor of the Exchequer invited Lord Hutton of Furness to chair the Independent Public Service Pensions Commission ("the IPSPC"). The IPSPC was tasked with undertaking a fundamental structural review of public service pension provision.

8 The IPSPC published its final report in 2011, setting out recommendations to reform public service pensions to balance better the interests of taxpayers, employers and members. The Government accepted the IPSPC's recommendations as the basis for discussions with public service workers, trade unions, and other representative bodies.

9 In November 2011, the Government published a Command Paper[1] setting out the Government's framework for reform of the public service schemes. Further discussions were undertaken with each of the workforces to develop scheme design proposals.

10 In April 2015 (April 2014 in the case of the Local Government Pension Scheme in England and Wales), new schemes were introduced for each of the main workforces – local government, teachers, the NHS, the armed forces, firefighters, police, judiciary, and the civil service. The reforms were implemented by regulations made under the Public Service Pensions Act 2013 (PSPA 2013).

11 As part of the 2015 reforms, those within 10 years of retirement remained in their legacy pension schemes. This transitional protection was not a recommendation of the IPSPC but was agreed following discussions with member representatives.

12 In December 2018, the Court of Appeal found in *Lord Chancellor v McCloud, Secretary of State for the Home Department v Sargeant* [2018] EWCA Civ 2844 (the *McCloud* judgment) that transitional protection unlawfully discriminated against younger members of the judicial and firefighters' pension schemes, and also gave 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.

13 On 15 July 2019, the Chief Secretary to the Treasury made a written ministerial statement[2] setting out that the Government considered that the Court of Appeal's judgment had implications for all of the public service pension schemes and planned to come forward with proposals to remedy the discrimination across the schemes.

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[1] Public Service Pensions: good pensions that last, November 2011, Cm 8214 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/205837/Public_Service_Pensions_-_good_pensions_that_last._Command_paper.pdf

[2] Public Service Pensions Statement made on 15 July 2019 (HCWS1725): https://questions-statements.parliament.uk/written-statements/detail/2019-07-15/HCWS1725

14 On 16 July 2020, the Government published a Command Paper: *Public service pension schemes: changes to the transitional arrangements to the 2015 schemes*[3]. The consultation set out two proposed options for retrospectively removing the discrimination suffered by members who were not eligible for transitional protection due to their age and proposed that the legacy schemes would be closed to all members on 31 March 2022.

15 It is normal practice in discrimination cases to remedy unequal treatment by reverting to the most beneficial option. However, the reforms that were introduced in 2015 were progressive reforms and were in part intended to even out the value of pensions between some of the highest and lowest earners, resulting in some, particularly lower and middle earners, being better off in the new schemes. Simply extending transitional protection to all affected members would address the discrimination identified by the Court but would also mean that some members would be placed in a worse position. Instead, the Government proposed that members should be given a choice of which scheme benefits they wish to receive during the period from when the new schemes were introduced to the date that the legacy schemes are to be closed. The consultation sought views on whether the choice should be made immediately (once the necessary legislative changes were made) or deferred until the point that a member's pension benefits become payable.

16 In February 2021, the Government published its response[4], confirming that the 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 paid. The Government explained that it preferred this approach as it would provide members with greater certainty about their decision and avoid the need for them to make assumptions about matters such as their future career and retirement age, which would increase the risk of making imperfect decisions, particularly for younger members. The response confirmed that affected members who are already in receipt of pension benefits will be given a choice as soon as possible after necessary changes to the schemes are implemented via legislation, or earlier if possible.

17 Separate consultations were undertaken in relation to the Judicial Pension Schemes and the Local Government Pension Schemes because of the unique arrangements within those schemes. The Northern Ireland Department of Finance also undertook a separate consultation in relation to the public service pension schemes that are their responsibility under the devolution arrangements.

18 In the Queen's Speech on 11 May 2021, the Government announced its intention to bring forward legislation to implement retrospective changes to remedy the discrimination that arose when transitional protection was afforded to older public service workers when new

[3] Public service pension schemes: changes to the transitional arrangements to the 2015 schemes Consultation, CP 253, July 2020: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/900766/Public_Service_Pensions_Consultation.pdf

[4] Public service pension schemes: changes to the transitional arrangements to the 2015 schemes Government response to consultation, CP373, February 2021: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/958635/Public_Sector_Pensions_Consultation_Response.pdf

public service schemes were introduced in 2014/15 and to ensure equal treatment for all members within each of the main public service pension schemes by moving all members into the reformed schemes on 1 April 2022.

19 For the main public service pension schemes (the non-judicial schemes), where the Act refers to the "new scheme", this refers to the reformed 2015 schemes, introduced following an independent review of public service pensions, and made under the PSPA 2013. In respect of the judiciary, the scheme made under the PSPA 2013 is referred to in the Act as the "judicial 2015 scheme" rather than "new scheme". This is to avoid confusion with the newly designed, reformed scheme which will provide for future accruals for the judiciary from 1 April 2022 onwards. The pre-2015 public service pensions schemes are in each case referred to as the "legacy scheme".

Non-judicial schemes (except local government)

20 Following consultation on the approach to implementing the remedy, the Government is proceeding with the Deferred Choice Underpin (DCU), which enables members to make a choice as to whether to take legacy or new scheme benefits for the remedy period when their pension benefits become payable. The Act brings forward changes required for effective implementation of the remedy.

21 The new schemes themselves are not discriminatory, and the Government wishes to ensure that all members are treated equally in respect of the scheme design available to them after the discrimination has been addressed.

22 Therefore, all public servants who continue in service from 1 April 2022 onwards will do so as members of their respective new scheme. Legacy schemes will be closed in relation to service after 31 March 2022, closing the remedy period during which members in scope have a choice of benefits.

Local government schemes

23 A different approach was adopted for the Local Government Pension Schemes (LGPS), where all members still accruing benefits were moved to new schemes either on 1 April 2014, for the LGPS England and Wales, or 1 April 2015, for the LGPS for Scotland and Northern Ireland. In those schemes, older members in service on 31 March 2012 were provided with an underpin - giving them the better of accrual as if under their previous legacy scheme provisions or under the reformed scheme provisions, for pensionable service from the date they moved to their new LGPS scheme.

24 For these LGPS schemes there will be no change that service should be under reformed schemes. However, the underpin will be extended to all those members affected by the discrimination. The underpin will not apply to service after 31 March 2022 or for service rendered after the member's Normal Pension Age (NPA)[5], if earlier.

[5] Normal Pension Age is the age at which a pension scheme member can start taking pension benefits on a voluntary basis without any reductions. NPA is set in scheme rules. A member can retire voluntarily before NPA, as long as they are over their MPA, but will then face a reduction to their benefits.

Judicial schemes

25 There are a number of important differences between the proposed remedies for the judiciary and for the wider public service which arise from the unique nature of judicial office and the judicial legacy schemes. The key difference is that, unlike the wider public service remedy in which eligible individuals will be returned to their legacy scheme and make a choice at retirement as to the basis on which they would like their benefits calculated, for the judiciary the remedy will be provided by way of an 'options exercise'. It is envisaged that this will take place once the necessary legislative and data requirements are in place.

Cost control mechanism

26 The cost control mechanism is a mechanism designed to ensure a fair balance of risk with regard to the cost of providing public service defined benefit (DB) pension schemes between members of those schemes and the Exchequer (and by extension taxpayers). If, when the mechanism is tested, those costs have increased or decreased by more than a specified percentage of pensionable pay compared to the employer cost cap, then member benefits (and/or member contributions) in the relevant scheme are adjusted to bring the cost of that scheme back to target. The target cost is currently the same as the employer cost cap. So, there is effectively a corridor either side of the target cost, with a margin representing the 'ceiling' and 'floor'. If costs fall below the lower margin (a "floor breach"), then benefits must be increased to bring costs back to target. If costs increase above the upper margin (a "ceiling breach"), then benefits must be reduced.

27 The first test of the mechanism was at the 2016 valuations. Provisional 2016 cost control results indicated a breach of the cost cap floor in all schemes for which results were assessed. In the context of these provisional results, the government announced that it was asking the Government Actuary to review the cost control mechanism. The government was concerned that the cost control mechanism was too volatile and might not be operating in line with its original objectives; in particular, the intention that benefit rectification would only be triggered by 'extraordinary, unpredictable events'.

28 The cost control element of the 2016 valuations was paused due to the uncertainty arising over the value of member benefits following the judgments in the McCloud and Sargeant litigation, and with it so was the Government Actuary's review of the mechanism. On 16 July 2020, alongside the publication of the Government's consultation on addressing the discrimination identified in the McCloud and Sargeant judgments, the Government announced that the pause of the cost control element of the 2016 valuations process would be lifted and the Government Actuary's review would proceed. In addition, the Government announced that the costs associated with addressing the discrimination would be considered when completing the cost control element of the 2016 valuations.

29 Since the government was concerned that the mechanism may not be working as intended, it decided that there should be no benefit reductions for members of any schemes at the 2016 valuations. HM Treasury published amending directions in October 2021 which will allow schemes to complete the cost control element of the 2016 valuations and specifies how this should be done.[6] The Act contains provisions to ensure that any ceiling breaches that occur at

[6] https://www.gov.uk/government/publications/public-service-pensions-completion-of-2016-valuations

the 2016 valuations (or 2017 valuations for the Local Government Pension Scheme (Scotland)) are not rectified. So the Act ensures that no member benefits will be cut as a result of the 2016 valuations.

30 Furthermore, the Government Actuary has concluded his review of the mechanism, and his final report was published on 15 June 2021 which contained several recommendations on how to improve the mechanism.[7] The Government consulted on three of those recommendations and published its response in October 2021.[8] All three proposals consulted on are being taken forward, all of which were recommendations by the Government Actuary. They are: (i) reformed scheme only design; (ii) wider cost corridor; and (iii) an economic check.

31 All three changes will be implemented in time for the 2020 valuations and are expected to make the cost control mechanism more stable, as was made clear in the Government Actuary's review of the mechanism. A more stable mechanism means changes to member benefits or contributions become less likely. The proposed reforms thus help provide greater certainty regarding members' projected retirement incomes and level of contributions.

32 The Act includes measures which implement the framework for two of these reforms: the reformed scheme only design and the economic check.

Judicial Pensions

33 The Public Service Pensions Act 2013 (PSPA 2013) introduced a statutory framework for the reform of public service pension schemes. Following a public consultation exercise, the New Judicial Pension Scheme 2015 (NJPS) was established under the Judicial Pensions Regulations 2015 (JPS 2015).

34 This resulted in many changes to judicial pensions, with the most significant being that members in NJPS were now subject to annual and lifetime allowance limits on the tax-relieved benefits accrued due to the tax-registered nature of the scheme. These changes had a disproportionate impact on the judiciary, resulting in recruitment and retention issues. These were underlined by the fact that the first ever unfilled vacancy at the High Court occurred in the 2014/15 recruitment exercise.

35 In 2018, the Senior Salaries Review Body (SSRB) published its Major Review of the Judicial Salary Structure which confirmed evidence of significant and escalating recruitment and retention problems at all levels of the judiciary. They concluded that the principal cause of this was the cumulative impacts of the 2015 public pension reforms and subsequent changes to pension tax thresholds.

36 This is an issue for the judiciary because many senior judges are in a position where they have accrued significant private sector pensions prior to taking up judicial office, which means that the pension tax charges would be felt more acutely and by a significant proportion. Moreover, owing to the judiciary's unique constitutional role, salaried judges are not able to work in private practice after taking up office and they are also appointed on the understanding that

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[7] https://www.gov.uk/government/publications/cost-control-mechanism-government-actuarys-review-final-report

[8] https://www.gov.uk/government/consultations/public-service-pensions-cost-control-mechanism-consultation

they will not return to private practice once they have retired. Their options for supplementing their income are therefore limited. Furthermore, many judges are also in the unusual position of taking a pay cut to join the judiciary. These factors are key to explaining why the judicial pension scheme is a vital part of judicial remuneration and integral to recruitment and retention.

37 Responding to the SSRB's review in June 2019, the Government introduced a temporary Recruitment and Retention Allowance for certain senior salaried judges who were eligible to join NJPS and made a commitment to develop a pensions-based solution for the whole judiciary, which would address, in the long-term, the recruitment and retention problems identified by the SSRB.

38 In July 2020, the Government published a consultation setting out its plan to introduce a reformed judicial pension scheme that would be in line with the main principles of the 2015 reforms but also retain key elements of the legacy schemes. For this reason, the reformed scheme contains many features of the 2015 schemes: benefits are based on career average earnings rather than final salary; the Normal Pension Age is linked to State Pension Age; and members have an option to commute part of their pension in exchange for a lump sum, instead of being given an automatic lump sum on retirement. Crucially, to address the recruitment and retention issues, the reformed scheme will be tax-unregistered, like the judicial legacy schemes, and have a higher accrual rate compared to the NJPS. The aim, as confirmed by the consultation, is to have this open to all eligible salaried and fee-paid judicial office holders from 1 April 2022, where they can accrue benefits under it.

39 The response to this consultation published by the Ministry of Justice in February 2021 confirmed the intention to implement the reformed scheme in line with the proposals set out in the published consultation document in July 2020.

40 Public service pensions are a devolved matter for Northern Ireland (NI) and are established under separate primary legislation to that in Great Britain. NI scheme provisions are broadly identical to the comparable schemes in Great Britain. Separate consultations were carried out for public service pensions schemes in Northern Ireland. The Department of Finance consulted on the broadly identical policy options to the Treasury and the outcome of their consultation reflected that of the Treasury. The Department for Communities carried out a consultation for the Local Government pension scheme NI. Their approach remains identical to that proposed for the equivalent scheme in Britain.

Judicial Allowances

41 The judicial allowances measure will place the power to determine allowances for judicial office holders on a statutory footing. Allowances have been used to recognise work undertaken outside of a judge's core work of hearing cases, such as providing leadership or significant support to other judges and courts administrative staff, to address temporary recruitment and retention problems, or to recognise temporary periods of additional responsibility. Allowances are useful as, unlike judicial salaries which are subject to statutory protection, they can be removed when the need for them falls away, for example, a judge stops undertaking leadership responsibilities, and so will be used to make temporary and ad-hoc payments where appropriate.

42 There are inconsistencies within current legislation in that the Lord Chancellor has a statutory power to determine provision of an allowance to some, but not all, judicial office holders for which the Lord Chancellor has the power to determine salary. This measure is therefore intended to resolve such inconsistencies by putting any residual common law powers in this area on a statutory footing and to ensure sufficient flexibility in judicial remuneration in certain specific circumstances, particularly where such remuneration is on a temporary basis.

Judicial Mandatory Retirement Age

43 The judicial mandatory retirement age (MRA) is the upper age at which judicial office holders, including judges, tribunals' non-legal members, magistrates, and coroners, are required to vacate office. The MRA does not prevent judicial office holders from resigning or retiring earlier should they wish to.

44 The MRA may be seen as an important requirement of judicial office which helps to preserve public confidence in the health and capacity of those appointed, while protecting judicial independence by avoiding the need for individual assessments and the possibility of judicial office holders being removed at the whim of the Executive. It also supports judicial resource planning and promotes the diversity of the judiciary by ensuring a steady flow of new appointments.

45 Although retaining an MRA is important for the above reasons, it has been over 25 years since the MRA was set at 70 for the majority of judicial office holders. Since then, the structure and operation of courts and tribunals have developed and so have the resourcing needs of the judiciary. Meanwhile, the average life expectancy in the UK has increased significantly and a greater number of people are now working for longer.

46 The UK Government consulted in 2020 on proposals to increase the MRA. Following careful consideration of over 1000 responses, the Government decided to raise the MRA to 75. This is intended to help ensure the judiciary can continue to meet the demands of courts and tribunals by retaining valuable judicial expertise for longer and attracting a greater number of potential candidates for judicial office from diverse backgrounds.

47 Unlike judges, there is no provision which allows magistrates to have their appointments extended beyond the current MRA. To further support the resourcing of magistrates' courts, the Government decided that, as part of the MRA increase, provision is made to allow the reinstatement of those retired magistrates who are younger than 75 and who wish to return to continue sitting, where this is necessary to meet business needs.

48 The Scottish Government, the Welsh Government and the Department of Justice in Northern Ireland conducted separate consultations on similar proposals for those judicial office holders whose MRA is a devolved matter for their legislatures, and they also decided to raise the MRA of those offices to 75. Their consultation response noted the importance of maintaining parity across the United Kingdom to preserve public confidence in the judiciary and ensure equal opportunities for judicial office holders across jurisdictions.

Sitting in retirement

49 Sitting in retirement (SIR) permits a salaried judge to retire from their salaried office, draw their pension in relation to that office, and continue to sit as a fee-paid judge if there is a business need to do so.

50 While salaried judges can apply to sit in retirement, this option was not equally available to fee-paid judges under previous legislation. To remove this differential treatment and provide a policy which applies consistently across salaried and fee-paid offices, the Act provides for a suite of new judicial offices to which both salaried and fee paid office holders in scope can apply on retirement.

51 While it is hoped that, in time, the changes to judicial pension and the higher MRA will lead to improvements in recruitment and retention of judicial office holders that will reduce the business need for judges to sit in retirement, drawing upon retired judicial office holders remains an important flexibility to help the judiciary meet immediate demands where there

may be temporary shortages. Extending powers for judges to be appointed to sit in retirement to a wider range of judicial offices, including relevant fee-paid offices, is designed to enhance this flexibility.

UK Asset Resolution (UKAR)

52 The Bradford and Bingley Staff (BBS) Pension Scheme and NRAM Pension Scheme are two public sector pension schemes which respectively pay the pension payments and other benefits of former employees (and their beneficiaries) of Bradford & Bingley Ltd (B&B) and Northern Rock, two banks which were taken into public ownership as a result of the 2007-2008 financial crisis.

53 The schemes previously resided under B&B and NRAM Limited (NRAM), two companies holding the mortgage and loan assets of B&B and Northern Rock that the Government acquired during the financial crisis. The Government has gradually been returning these assets to the private sector and announced the completion of the final sale of B&B and NRAM and their remaining assets in October 2021.[9] As part of the sale, the liability for the payment of the pensions was novated from B&B and NRAM to the Government-owned holding company UKAR.[10]

54 The Treasury has a statutory obligation to guarantee that the assets in the BBS Pension Scheme are sufficient to meet the pension liabilities.[11] It has also extended this guarantee in relation to the NRAM Pension Scheme through a credit support deed in May 2019.

55 The Government is now seeking to relieve UKAR of its remaining liabilities (including the BBS and NRAM pension schemes) such that UKAR may be wound down.

56 In the 2020 Budget, the Treasury announced its intention to "create a new central Government pension scheme for the members of the BBS and NRAM schemes [and to] sell assets held by the NRAM and BBS schemes over 2023-24 and 2024-25, subject to the necessary legislation being brought forward, supportive market conditions and achieving value for money."[12]

57 This Act confers the necessary powers upon the Treasury to implement this policy. It confers powers on the Treasury to create one or more public pension schemes to provide for pensions and benefits to and in respect of the members of BBS and NRAM pension schemes. It also confers powers on the Treasury to transfer the assets and liabilities of the BBS and NRAM schemes to the Government.

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[9] 'Disclosure of asset sale completion', 2 November 2021, Written statements - Written questions, answers and statements - UK Parliament

[10] Glen, John, 'Contingent Liability Notification', 9 May 2019 https://questions-statements.parliament.uk/written-statements/detail/2019-05-09/hcws1553

[11] See Article 26 and paragraph 10 of Schedule 3 to the Bradford and Bingley plc Transfer of Securities and Property etc Order 2008 (S.I. 2008/2546)

[12] 'Budget 2020', HM Treasury, 11 March 2020, p. 101 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/871799/Budget_2020_Web_Accessible_Complete.pdf

58 The Act contains a number of related provisions, including provisions to ensure that affected individuals' pension benefits are at least as good following the transfer; and provisions to require the surrender of personal data necessary to make the transfer. The Act also confers powers for the transfer to the Treasury of additional pension payments, which are currently paid directly by UKAR to a small number of beneficiaries outside the BBS and NRAM schemes.

Legal background

Public service pension schemes and the Court of Appeal's judgment

59 Public service pension schemes in respect of each workforce (civil service, NHS, teachers, police, firefighters, armed forces, and judiciary) can broadly be considered to fall into two categories: legacy schemes (pre-1 April 2015) and new schemes (from 1 April 2015). Whilst there is a patchwork of enabling legislation for the legacy (largely final salary) schemes across the main public service pension schemes, all of the main public service new schemes are made under (or deemed to be made under) the Public Service Pensions Act 2013 (PSPA 2013).[13] Section 1(1) PSPA 2013 allows the making of regulations for the payment of pensions and other benefits in respect of persons specified in section 1(2) PSPA 2013. The person responsible for making (and maintaining) the regulations in respect of each scheme (defined in the PSPA 2013 as the "responsible authority") is specified in Schedule 2 to the PSPA 2013 and is generally the Secretary of State of the department responsible for the administration of the relevant service (e.g. the Secretary of State for Education, in the case of teachers). Where a scheme is devolved, the responsible authority is the equivalent Scottish or Welsh Minister, or the relevant Department in Northern Ireland. In Northern Ireland, devolved schemes are established under the Public Service Pensions Act (Northern Ireland) 2014 (PSPA(NI) 2014). Where these notes refer to existing provisions in PSPA 2013, comparable provisions currently exist for the devolved schemes under PSPA (NI) 2014, unless otherwise indicated. Before being made, the Treasury (or the Department of Finance in Northern Ireland) must consent to scheme regulations, unless an exception applies (as is the case for some but not all devolved schemes) (see sections 3(5) and 3(6) PSPA 2013).

60 PSPA 2013 permits a scheme made under section 1(1) to make provision as to any of the matters specified in Schedule 3 – this includes eligibility for membership, the conditions subject to which benefits are payable, the recovery of overpaid benefits, the exclusion of double recovery of compensation or damages, interest on late payment of contributions, the return of contributions (with or without interest), the payment or receipt of transfer values for the purpose of creating or restoring rights to benefits, and the administration and management of the scheme (see section 3(2)(a) PSPA 2013).

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[13] The reformed Local Government Pension Scheme for England and Wales was made under section 7 of the Superannuation Act 1972 and, to the extent that the scheme makes provision for the payment of pensions and other benefits to (or in respect of) a person in relation to that person's service on or after 1 April 2014 and such provision could also be made under section 1(1) PSPA 2013, the scheme had effect as if it were a scheme made under section 1(1) PSPA 2013 (see section 28 PSPA 2013).

61 A scheme made under section 1(1) PSPA 2013, if a defined benefits scheme, must be a career average revalued earnings scheme, as defined in section 8(4) of the PSPA 2013 (see section 8(2) PSPA 2013), or a defined benefits scheme of such other description as Treasury directions may specify. A scheme made under section 1(1) PSPA 2013 cannot be a final salary scheme (section 8(3) of the PSPA 2013). The legacy schemes were closed by section 18(1) of the PSPA 2013; the closing date was 31 March 2014 for the legacy Local Government Pension Scheme for England and Wales and 31 March 2015 for any other legacy scheme (note that different provisions applied to public body pension schemes such as those listed in Schedule 10 of the PSPA 13).

62 Sections 18(5), 18(5A) and 18(6) allowed for scheme regulations to make further exceptions for those members who were in service immediately before 1 April 2012, or who had ceased to be members of a legacy scheme before that date. Most main public service pension scheme regulations made under section 1(1) of the PSPA 2013 exercised the powers contained in sections 18(5), 18(5A), and 18(6) to introduce transitional and tapered protection. Provisions in section 31 PSPA 2013, largely mirroring those in section 18 PSPA 2013, apply to the legacy schemes of certain public bodies currently listed in Schedule 10, such as the Secret Intelligence Service and the Security Service.

63 Those members who did not benefit from an exception in section 18(3) or scheme regulations made under sections 18(5), 18(5A) and 18(6) PSPA 2013 were afforded a 'final salary link' in accordance with section 20 and Schedule 7 PSPA 2013. In brief, the provisions providing for a final salary link ensure that, although the member is not accruing further pensionable service in a legacy scheme, it is a member's salary on leaving service that is used for the purposes of calculating the value of any pension accrued in a final salary legacy scheme before 1 April 2015. Without this provision, a member would be regarded as having left that legacy final salary scheme and their accrued rights under a legacy final salary scheme would therefore be determined by their salary upon leaving that scheme (i.e. on or before 1 April 2015) rather than upon leaving service.

64 As set out above, the genesis of the Act was the judgment of the Court of Appeal in *Lord Chancellor v McCloud, Secretary of State for the Home Department v Sargeant* [2018] EWCA Civ 2844, which found that the judicial and the firefighters' new pension schemes, that were introduced under the PSPA 2013 with effect from 1 April 2015, contained transitional provisions which led to unlawful direct age discrimination, and in neither case could that discrimination be justified; there was also a finding of unlawful indirect discrimination in relation to equal pay and indirect race discrimination.

65 The Act provides a comprehensive remedy to address the discrimination identified by the Court of Appeal, both retrospectively and prospectively, as well as the consequential effects of that remedy.

Cost control mechanism (CCM)

66 The Government made provisions to establish the CCM in the PSPA 2013. However, the detail regarding the parameters of the CCM – including the costs or changes in costs that are to be taken into account for the purposes of measuring changes in the cost of a scheme – are delegated to Treasury directions made under sections 12(3) and 12(4) of the PSPA 2013. These directions are known as The Public Service Pensions (Valuations and Employer Cost Cap) Directions 2014, as amended.

67 A key component of the CCM is the "employer cost cap". Section 12(3) of the PSPA 2013 requires that the "employer cost cap" (i.e. the rate, expressed as a percentage of pensionable earnings of members of the scheme, to be used for the purpose of measuring changes in the cost of the scheme) is set in accordance with Treasury directions. Those Treasury directions may in particular specify how the first valuation of a new scheme (carried out under section

11 of the PSPA 2013) is to be taken into account in establishing the 'employer cost cap' for that scheme. The "employer cost cap" was incorporated into the secondary legislation (made under section 1 of the PSPA 2013) containing each scheme.

68 Section 12(6) of the PSPA 2013 allowed a new scheme to provide for a procedure for returning the scheme to the "target cost" in agreement with employers and members (or their representatives), with a default where agreement could not be reached. Schemes set the default as a change to the rate of accrual. A consequence of this framework is that scheme regulations also require the cost of a scheme to be returned to the "target cost" when there is a breach of the employer cost cap in excess of the margins.

69 Treasury regulations (made under section 12(5) of the PSPA 2013) specify the upper and lower margins as specific percentages of pensionable pay above and below the employer cost cap, and require that the cost of the relevant scheme must remain within those margins. The upper margin forms a 'ceiling', with the lower margin forming a 'floor'. Where the cost of the scheme has gone beyond those margins on either side of the employer cost cap, the regulations (as required by section 12(5)(a) of the PSPA 2013) specify that the cost of the scheme must be brought back to the "target cost". The Regulations set the "target cost", which must be between the margins, in accordance with section 12(5)(b) of the PSPA 2013. The target cost is currently the employer cost cap, which, as mentioned above, was set for each scheme pursuant to the first valuations.

Judicial schemes

70 The older judicial pension schemes for salaried judges were substantially set out in primary legislation: most notably the Judicial Pensions Act 1981 (the 1981 Act) and the Judicial Pensions and Retirement Act 1993 (JUPRA). The 1981 Act consolidated the legislation applying to different salaried judicial offices, while JUPRA provided a unified scheme for all holders of salaried qualifying judicial office. The 1981 Act schemes closed to new members on 31 March 1995. The JUPRA scheme was open to all holders of salaried qualifying judicial office appointed on or after that date, and also to judges who held office before that date who elected that it should apply to them or who were appointed to a different office where the 1981 Act would have required a change in pension arrangements.

71 As a result of the *O'Brien* litigation,[14] the Fee-Paid Judicial Pension Scheme (FPJPS 2017) was commenced on 1 April 2017. FPJPS 2017 was established under the Judicial Pensions (Fee-Paid Judges) Regulations 2017 (FPJR 2017), which were made under a new power inserted into JUPRA (section 18A) by the Pension Schemes Act 2015. FPJPS 2017 provides benefits for eligible fee-paid judicial office holders which are intended to mirror as far as possible those available to salaried judicial office holders under JUPRA.

72 The PSPA 2013 implemented the cross-Government pension reforms following the Hutton report. It provides the vires for the new Judicial Pension Scheme 2015 (NJPS) which was established under the Judicial Pensions Regulations 2015 (JPS 2015), which came into effect on 1 April 2015. On 1 April 2015, active scheme members of the legacy schemes were transferred

[14] The O'Brien litigation encompasses the following cases: *O'Brien v Ministry of Justice* [2013] UKSC 6; *O'Brien v Ministry of Justice* (Case C-432/17); *Miller and others v Ministry of Justice* [2019] UKSC 60.

into the NJPS except where a judge was entitled to either full or tapered transitional protection; and by the operation of section 18(1) PSPA 2013, the legacy schemes were closed to further accrual except where a judge was entitled to either full or tapered transitional protection.

73 These transitional protections were intended to protect judges closest to retirement. They were given effect by regulation 14 of and Schedule 2 to NJPS, which provide for exceptions to section 18(1) PSPA 2013. The exceptions gave full protection to judges who were in service on 1 April 2012 and aged 55 years (i.e. within 10 years of the NPA in the legacy schemes) or older at that date, thereby allowing them to remain in the legacy schemes until retirement. Tapered protection was available to judges who were in service on or before 31 March 2012 and aged between 51 and a half and 55 years on 1 April 2012. These judges were given the choice of whether to join NJPS on 1 April 2015 or to 'taper' across at a later date, determined by their date of birth, so that those judges retained legacy scheme benefits for a longer period. These provisions were found to be unlawful in the *McCloud* litigation and Chapter 2 of Part 1 addresses this discrimination for the judiciary.

Judicial Pensions

74 Provision for the reformed judicial pension scheme is made in secondary legislation under the existing power in section 1 of the PSPA 2013. The use of this existing power permits the reformed scheme to be delivered in accordance with the principles of the 2015 pension reforms. The PSPA 2013 provides a broad power for scheme regulations to establish new career average revalued earnings (CARE) schemes according to a common framework of requirements. These include an increased governance regime, the requirement for Normal Pension Age to be linked to State Pension Age (with some exceptions) and a cost control mechanism to keep the ongoing costs of the schemes within defined margins. The reformed scheme is a tax-unregistered scheme, and this is achieved by not registering the pension scheme under Part 4 of the Finance Act 2004.

Judicial Allowances

75 The Lord Chancellor's powers to determine judges' pay are set out in the legislation which creates the relevant judicial office. These provisions will be amended to include the express power to determine allowances and as there is no single piece of legislation detailing the power to determine pay, a number of amendments will be made to several pieces of legislation.

Judicial Mandatory Retirement Age (MRA)

76 JUPRA introduced a standard MRA of 70 for the majority of judicial office holders in England and Wales, Scotland and Northern Ireland. The MRA only applied to judicial appointments made after the relevant provisions were commenced on 31 March 1995. Prior to this, judicial offices had differing MRAs or, in some cases, no MRA at all. The new MRA of 70 did not generally apply to those appointed to judicial offices before 31 March 1995.

77 While Schedule 5 to JUPRA covers the majority of judicial office holders in the UK, there are a number of judicial office holders who have their MRA set in different legislation, including magistrates (lay justices) and coroners in England and Wales whose MRA is set at 70 by the Courts Act 2003 and the Coroners and Justice Act 2009 respectively.

Sitting in retirement (SIR)

78 There was not previously a consistent SIR scheme by which salaried judges were appointed to fee-paid office to sit in retirement. Instead, various statutory provisions were used to give effect to the policy. These included sections 94A and 94B of the Constitutional Reform Act 2005 and section 9(1) of the Senior Courts Act 1971.

79 Once commenced, the SIR provisions in the Act will provide a framework to create a suite of bespoke and distinct offices in which judicial office holders (whether previously salaried or fee-paid) will sit in retirement. The provisions create a single appointing power permitting the relevant senior judge to authorise the appointment (with appropriate concurrence) of a judicial office holder to a distinct office, only to be used for a judicial office holder SIR.

80 The Act also provides for a judicial office holder in a SIR office to be authorised to act as and be treated for all purposes as a pre-retired holder of that office, with the exception of matters such as remuneration and tenure (see Section 125(3) of the Bill). The ability to act as and be treated for all purposes as a pre-retired office holder includes the ability to be developed to sit in the same courts and tribunals, subject to the relevant judicial policies.

81 To the extent that previous statutory provisions permit only salaried judges to sit in retirement, those provisions are repealed.

Territorial extent and application

82 Section 130 sets out the extent and application of the provisions in the Act. The provisions of the Act extend and apply to England and Wales, Scotland and Northern Ireland.

Legislative Consent Motions

83 Under the terms of the Sewel Convention, the UK Parliament will not normally legislate with regard to matters that are within the legislative competence of the Scottish Parliament, Senedd Cymru or the Northern Ireland Assembly without the consent of the legislature concerned.

84 In the view of the UK Government, the Act will engage the Sewel Convention in Scotland, Wales and Northern Ireland as certain areas of judicial policy are devolved in Scotland, Wales and Northern Ireland. Judicial pensions policy is also devolved/transferred in Northern Ireland in relation to certain devolved judicial offices and falls within devolved competence of Scotland where the judicial pension scheme is not reserved to Westminster. Legislative consent has therefore been obtained from all three devolved legislatures in relation to these matters.

85 The Act makes provision for public service pension schemes in Scotland (for teachers, NHS workers, firefighters, police, and local government workers) where the Scottish Ministers have executive but not legislative competence.

86 The Act makes provision for the firefighters' pension scheme in Wales where Welsh Ministers have executive competence, however Senedd Cymru does not have legislative competence.

87 The Act makes provision for pensions for the armed forces and members of the UK civil service in respect of Northern Ireland, as legislative competence for these pension schemes sits with the UK Parliament. The Act also makes provision for public service pension schemes in Northern Ireland (for civil servants in the Northern Ireland civil service, teachers, NHS workers, firefighters, police and local government workers) where the Northern Ireland Assembly has legislative competence. Legislative consent has therefore been obtained from the Northern Ireland Assembly in relation to these matters.

88 The consent of the Scottish Parliament, Senedd Cymru or the Northern Ireland Assembly has been obtained for those amendments relating to matters within the legislative competence of the relevant devolved legislature(s).

89 See the table in Annex A for a summary of the position regarding territorial extent and application.

McCloud Remedy (Judiciary)

90 In terms of current legislation, pension provision for Welsh and most Scottish devolved judicial office holders is provided for in the UK judicial pension schemes and the remedy provisions as described below will apply equally to them. In respect of Northern Ireland, while most office holders are members of the UK schemes, a small number of devolved judiciary were provided with a 2015 scheme under Northern Ireland legislation. The Act includes equivalent amendments to implement fully the *McCloud* remedy to the relevant Northern Ireland legislation which provided for a 2015 reformed scheme.

Judicial Pensions (prospective remedy)

91 Provisions in Chapter 4 of Part 1 on judicial pensions extend to the whole of the UK. Provision restricting accrual in existing pension schemes after 31 March 2022 applies to judicial office holders across the UK and equivalent provision is also made in relation to the relevant Northern Ireland legislation. Section 97 amends the PSPA 2013 so that devolved judicial office holders in Scotland and Northern Ireland may be added to a scheme under that Act at the request of the relevant devolved administration.

Judicial Offices

92 Section 121 and Schedule 1 which make provision to raise the MRA to 75 for certain judicial offices extend UK-wide. Included are a number of judicial offices in Wales, Scotland and Northern Ireland, whose MRA is a devolved matter for Senedd Cymru, the Scottish Parliament and the Northern Ireland Assembly.

93 Sections 123 to 128, which make provision for the new sitting in retirement offices to which both salaried and fee-paid judicial office holders can apply for upon retirement, apply UK-wide. The judicial office holders in scope of this provision (set out in Schedule 3) include judicial office holders whose terms of appointments are devolved matters for Senedd Cymru and the Northern Ireland Assembly. Part 4 of Schedule 3 extends to Northern Ireland only whilst Part 5 extends to England and Wales only. Judicial office holders whose terms of appointments are a devolved matter for the Scottish Parliament are not in scope of this provision.

94 The judicial allowances measure extends to the whole of the UK. It will extend to judicial offices in Scotland, Northern Ireland and Wales where the Lord Chancellor has legislative competence in relation to the determination of remuneration. The Scottish Government and the Department of Justice in Northern Ireland have also provided legislative consent so that certain judicial offices in Scotland and Northern Ireland where legislative competence in relation to the determination of remuneration is devolved are also be included in this measure; in such cases the power to determine allowances will be provided to the authority which has the existing power to determine salary or fees. The judicial office holders whose remuneration is a devolved matter for Senedd Cymru are not included in the judicial allowances measure.

Commentary on provisions of Act

Part 1: Public Service Pension Schemes

Chapter 1: Schemes other than Judicial Schemes and Local Government Schemes

Section 1: Meaning of “remediable service”

95 This Section identifies periods of service that will be subject to the remedy to address the discrimination identified by the Court of Appeal. This section underpins the treatment of all members with affected pensionable service, whether they are active, deferred, a pensioner member or deceased. Sections 1(3) to 1(6) set out four conditions that must be satisfied:

a. that the service relates to a period when the discrimination arose;

b. that the member was eligible for transitional protection or would have been eligible for transitional protection but for the discriminatory requirement in the schemes;

c. that the member was on or before 31 March 2012 a member of a legacy scheme or, in the case of certain schemes for firefighters, eligible to be a member of such a scheme; and

d. that the member does not have a disqualifying break in service falling within the period set out in section 1(6).

96 Section 1(7) provides that a disqualifying break in service for the fourth condition is a period of more than five years. This reflects the rules of public service pension schemes that allow members who leave to rejoin subsequently and have their service aggregated where the gap between leaving and rejoining is 5 years or less. Section 1(7)(b) provides that a break in service relating to a period where the member was in another pension scheme as a result of a compulsory transfer of employment to which the Fair Deal policy applies, is not a disqualifying break. Section 1(7)(c) provides that a break in service relating to a period where, as a result of a local government contracting-out transfer, the member was in another pension scheme that offers pension arrangements that are broadly comparable with those offered to the member before the transfer, is not a disqualifying break

97 Section 1(10) identifies that further provision is made later in the Act to allow certain persons to count a period of service as pensionable service where it would not otherwise have been, in particular where the second condition is not met due to a decision by the person to opt-out (see section 5).

Section 2: Remediable service treated as pensionable under Chapter 1 legacy schemes

98 Section 2(1) provides that where a person has a period of remediable service under a Chapter 1 new scheme that service is to be retrospectively treated as pensionable service under the relevant Chapter 1 legacy scheme (of which they would have been entitled to be a member in the period 1 April 2015 to 31 March 2022 but for age discrimination). The person is retrospectively treated as never having had pensionable service under the Chapter 1 new scheme. This is the core retrospective provision that ensures that a person with remediable service is returned with retrospective effect to the pension scheme in which they would have been, but for the discrimination.

99 Section 2(2) clarifies that where a person has separate pension entitlements in relation to different employments, they will also have separate periods of remediable service. For example, this could be someone who has been a member of both an NHS and Civil Service

pension scheme simultaneously on account of having two part-time jobs and therefore essentially has two sets of "remediable service". However, section 38(2) sets out that where a member has service in multiple employments or offices and that service is aggregated for pension purposes, that service should be treated as a single employment or office.

100 Section 2(3) provides that where section 2(1) applies, it has effect for all purposes, unless the Act explicitly provides otherwise (such as under section 2(4)); be that determining which pension benefits were or are payable or determining to which pension rights members were or are entitled for the purposes of assessing whether any tax charge is due.

101 Section 2(4) provides an exception to the effect of section 2(1); that a member or employer liability to pay contributions is unchanged where a person is treated as having been a member of a legacy scheme under section 2(1). This means that contributions liabilities of members or employers are not affected by the retrospective provision made by section 2(1). For members who had remediable service in the new scheme prior to section 2(1) coming into force, this exception means that employee and employer contributions liabilities remain in the new scheme; this helps to avoid complex tax implications for members and schemes that would occur if the retrospective effect of section 2(1) applied to contributions liabilities. Further provision is made later in the Act (section 15 to 17) to correct any (notional) overpayment or underpayment of contributions the member has made compared to the amounts they would have paid, had they always been in the relevant scheme and had their contributions liabilities arisen in the relevant scheme instead.

102 Section 2(5) provides that any benefits that a member has in a Chapter 1 new scheme that relate to additional voluntary contributions made by the member or to a transfer into that scheme from another pension scheme, are not affected by section 2(1). The Act makes provision in respect of these matters at sections 20 and 21.

103 Section 2(6) refers to further provision that is made later in the Act to modify the application of section 2(3)(b) in respect of pensioner and deceased members. The policy objective is to ensure that changes to pension entitlement are not made until the member or their beneficiaries have had the opportunity to elect to instead receive new scheme benefits in relation to the member's remediable service.

Section 3: Benefits already paid

104 This section relates to the treatment of benefits already paid from a new public service pension scheme to a pensioner member or in respect of a deceased member. Where the payments were in relation to remediable service, but that service is now retrospectively treated as service under a legacy scheme by virtue of section 2(1), any benefits paid are to be retrospectively treated as if they were paid by the Chapter 1 legacy scheme and not as if paid by the new scheme.

105 All members who have remediable service will receive their benefits in relation to that service from the relevant legacy scheme, even where they elect to receive benefits equivalent to those that would have been paid from the new scheme. The purpose of this approach is to avoid the need for administrative complexities related to tax, to allow for any overpayment or underpayment of benefits to be calculated, and to provide clarity as to where scheme costs fall.

Section 4: Meaning of "the relevant Chapter 1 legacy scheme" etc

106 Section 4 defines the meaning of "relevant Chapter 1 legacy scheme". The purpose of this section is to ensure that members in scope of section 1, who will be retrospectively 'moved back' to a Chapter 1 legacy scheme in respect of their remediable service in accordance with section 2(1), are returned to the appropriate Chapter 1 legacy scheme or section of a Chapter 1 legacy scheme. Most of the public service workforces have two or more Chapter 1 legacy

schemes or have Chapter 1 legacy schemes with different sections for members depending on their joining date(s). The appropriate Chapter 1 legacy scheme, or section of a Chapter 1 legacy scheme, for an eligible member will usually be the scheme or section of which they were last a member (section 4(1)). Under section 4(2), where an individual opted-out of their Chapter 1 legacy scheme on or before the closing date (defined at section 1(8)) and on that date the rules of that scheme prohibited a person who opted-out from re-joining, the relevant Chapter 1 legacy scheme for that individual will be one which they would have been entitled to join on the closing date.

107 Under section 4(3), where an individual opted-out of their Chapter 1 new scheme after the closing date or ceased to be in an eligible employment or office, but re-joined their Chapter 1 new scheme or resumed service in an eligible employment or office before 1 April 2022, if the rules of the Chapter 1 legacy scheme of which they were last a member prohibited a person from re-joining, the relevant Chapter 1 legacy scheme for that individual will be one which they would have been entitled to join at the time they re-joined their Chapter 1 new scheme or resumed service in an eligible employment or office. It is possible that an individual had not previously been participating in a Chapter 1 legacy scheme or that there is no Chapter 1 legacy scheme which allows members who have opted-out to re-join; in such cases, subsections (6) and (8) provide that the appropriate Chapter 1 legacy scheme or section of a scheme will be the Chapter 1 legacy scheme or section of that scheme that they would have been entitled to join on 31 March 2012 (which corresponds with the condition set out in section 1(5)).

108 Section 4(4) provides for cases involving excess teacher service (as defined in section 110(2)).

Section 5: Election for retrospective provision to apply to opted-out service

109 Where an individual chose to opt out of a Chapter 1 legacy or Chapter 1 new scheme in relation to service between 1 April 2015 and 31 March 2022, section 5(1) of the Act provides that scheme regulations for the legacy scheme must make allowance for that service to be reinstated. Section 5(2) provides that, where an election is made, the period in question (being a period or periods of service between 1 April 2015 and 31 March 2022) is treated as pensionable service for the purposes of determining a member’s remediable service under section 1. This section ensures that members who would have had remediable service but for the fact that they opted-out of either a Chapter 1 legacy scheme or a Chapter 1 new scheme (for example, because they considered the Chapter 1 new scheme to be unsuitable) are able to re-join their Chapter 1 legacy scheme provided they fulfil the eligibility criteria set by scheme regulations. Once they have done so, the same provisions and processes will apply to them as to other eligible members; for example, they will be able to choose which set of benefits they wish to receive for the remedy period.

110 Section 5(3) and 5(4) provide that scheme regulations must set a deadline for members to make an election under section 5(1) and provide that the deadline must be no later than one year beginning with the day on which a remediable service statement is first provided in respect of the member (or such later time as the scheme manager considers reasonable). Section 5(3)(c) makes the member’s election irrevocable.

111 Under section 5(5) scheme regulations may make provision pursuant to which a person must first make an application to the scheme before an election can be made, or that the application may be refused unless a condition specified in the regulations is first met, for example.

112 Examples of conditions that may be specified pursuant to section 5(5) are set out in section 5(6). These may include, for example, allowing applications only where the member can demonstrate that they opted out as a consequence of the discrimination that arose or, where an individual participated in a partnership pension account, that an application may only be

granted where they transfer to the relevant scheme those rights in their partnership pension account that are referable to contributions made in respect of opted out service, or, where their partnership pension account rights have already been transferred to another scheme, make a payment to the relevant scheme in respect of that transfer, and surrender any entitlement that arises in relation to those contributions made in relation to the employment (by the employer or the member). Partnership pension accounts are defined contribution occupational pension scheme accounts offered to employees of the Civil Service as an alternative to membership of one of the main public service defined benefit pension schemes. Instead of opting out of pension scheme membership entirely, members may have chosen to have a partnership pension account.

Section 6: Immediate choice to receive new scheme benefits

113 This section requires that scheme regulations make provision for a pensioner member or the beneficiary of a deceased member, in respect of whom Chapter 1 legacy scheme benefits are payable, to make an election to receive Chapter 1 new scheme benefits in respect of their remediable service. What is a deferred choice for active and deferred members (under section 10) needs to be an immediate choice in relation to members who have already retired or died by the time the remedy is implemented, as entitlement to the payment of benefits in relation to remediable service will have already arisen. Pensioner members, and survivors of deceased members (or authorised representatives, where appropriate) need to be able to make a choice as to which set of benefits to receive as soon as the scheme is able to facilitate it.

114 Section 6(2) defines the concept of "relevant member" for the purpose of interpreting section 6(1).

115 Under section 6(3), where a pensioner member has multiple employments that are pensionable separately provision must be made to allow for separate elections in respect of each employment.

116 Section 6(4) states that section 2(1) only has effect for the purposes of determining the amount of benefits payable in relation to a member's remediable service if an election for new scheme benefits under section 6 is not made.

117 If a section 6 election is made, then section 2(1) has effect but not for the purposes of section 2(3)(b): the benefits payable in respect of any of the member's remediable service in a Chapter 1 new scheme will therefore be unchanged. Deferring the application of section 2(3)(b) until the member or their beneficiary has had the opportunity to determine whether they wish to elect to receive new scheme benefits in relation to the member's remediable service means that the amount of benefits payable to or in respect of a pensioner or deceased member will not change upon the coming into force of section 2(1). This is designed to avoid double corrections of members' pension benefits and to avoid unnecessary revisions to tax returns in cases where members who are already in receipt of their pension wish to retain their existing benefits.

118 Section 6(5) provides that the effect of a section 6 election is that the benefits payable by the Chapter 1 legacy scheme in relation to their legacy scheme remediable service (i.e. the service that was originally in the legacy scheme, prior to the effect of section 2(1)) are new scheme benefits. The overall effect of a section 6 election is that all the benefits payable in respect of remediable service will be new scheme benefits.

119 Section 6(7) confirms that elections under section 6 have effect in relation to the whole period of the member's remediable service in the employment or office in question that is pensionable service under the scheme. For members who may have had tapered protection, they will not be able to retain mixed benefits for the period of remediable service; they must choose to have either all new scheme benefits or all legacy scheme benefits for the whole period of remediable service.

Section 7: Elections by virtue of section 6: timing and procedure

120 Section 7(1) sets out that an election under section 6 must be made before the end of the section 6 election period (which is defined in section 7(2)) and is treated as taking effect immediately before the member became a pensioner member or, if the member died before becoming a pensioner, immediately before the member's death. The effect of the election is therefore retrospective, and the legislation specifies the timing of that retrospection to ensure that the member's pension rights are retrospectively treated as having arisen at the correct point in time (i.e. just before the pension benefits became payable).

121 Section 7(2) provides that the end of the section 6 election period is one year from the date that a remediable service statement is first provided by the scheme or such later time as the scheme manager considers reasonable in the circumstances. A remediable service statement is provided for later in the Act. It will contain information about the benefits payable in relation to a member's remediable service if an election to receive new scheme benefits is made or not made.

122 Section 7(3) sets out further provision that scheme regulations may make to manage immediate choice elections.

Section 8: Power to deem election by virtue of section 6 to have been made

123 It is possible that where a pension is already in payment, the member (if they are a pensioner) or survivor or personal representative (where a member is deceased) does not engage with the process of making an immediate choice within the section 6 election period specified in section 7(2).

124 Section 8 therefore provides that where no decision as to whether a section 6 election is to be made has been communicated to the scheme within the election period, scheme regulations may make provision deeming that an election has been made. This might be appropriate, for example, if the member or survivor lacks the legal capacity to make a decision. Section 8(1) provides that scheme regulations may treat a section 6 election as having been made immediately prior to the end of the election period if certain conditions have been met. Section 8(3) envisages that such conditions could relate to the value of benefits payable. This would, for example, allow a scheme to deem an election to be made where it is clear this would lead to a better outcome for the member.

Section 9: Persons with remediable service in more than one Chapter 1 legacy scheme

125 This section provides that where a person has remediable service in an employment or office that is pensionable under more than one legacy scheme, an election under section 6 applies in all of those schemes. Section 9(2) and 9(3) specify how the election made under section 6 applies in relation to a person's remediable service in another scheme. Where the person is also a pensioner member in relation to their remediable service in the employment or office under another scheme, or is deceased, the election has effect in that scheme as an election under section 6 and therefore new scheme benefits are payable in relation to the remediable service. Where the person is a deferred member in relation their remediable service in the employment of office under another scheme, the election has effect in that scheme as an election under section 10 and new scheme benefits will be payable in relation to the remediable service.

Section 10: Deferred choice to receive new scheme benefits

126 This section requires schemes to make regulations that permit an election to be made in relation to the remediable service of individuals who are active or deferred members when section 2(1) comes into force. Not all eligible members will be better off receiving Chapter 1 legacy scheme benefits for the remedy period. This section therefore allows active and

deferred members to make the choice as to whether Chapter 1 legacy scheme or Chapter 1 new scheme benefits are most beneficial for them in the period immediately before their benefits are expected to be paid for the first time, when they will have greater certainty over factors such as their career path and earnings. It is therefore a 'deferred choice'.

127 Section 10(3) provides that where an active or deferred member has multiple employments that are pensionable separately provision must be made to allow for separate elections in respect of each entitlement. For example, an active or deferred member may have different periods of employment in a workforce or across multiple workforces and may have decided to keep their pension entitlements separate (rather than transfer service from one scheme to another or to aggregate different periods pensionable under one scheme) and where that is the case, they will be able to take a decision in relation to each entitlement.

128 Section 10(4) provides that where an election is made the member or their beneficiary is entitled to Chapter 1 new scheme benefits in relation to their remediable service (in the absence of an election they (or their beneficiary) will be entitled to Chapter 1 legacy scheme benefits in relation to their remediable service by virtue of section 2(1)) and the benefits are paid from the legacy scheme.

129 Section 10(5) confirms that elections under section 10 have effect in relation to the whole period of the member's remediable service in the employment or office in question that is pensionable service under the scheme. For members who may have had tapered protection, they will not be able to retain mixed service for the period of remediable service; they must choose to receive either new scheme or legacy scheme benefits in relation to their remediable service.

Section 11: Elections by virtue of section 10: timing and procedure

130 Section 11(1) provides that scheme regulations under section 10(1) must set a deadline by which an election in relation to a member's remediable service must be made. Section 11(2) provides that the deadline must be no earlier than one year before the day on which new scheme benefits would become payable in relation to the member if they were to make an election under section 10.

131 Section 11(3) states that an election must be made before the deadline and takes effect immediately before the member becomes a pensioner member of the scheme. The effect of the election in this case is therefore prospective, and the legislation specifies the timing of when the election comes into force to ensure that the member's pension rights prospectively arise at the correct point in time (i.e. just before the pension benefits become payable).

132 Section 11(4) states that where an election is made on behalf of a deceased member, the election is treated as having taken effect immediately before the member's death. The effect of the election is therefore retrospective, and the legislation specifies the timing of that retrospection to ensure that the member's pension rights are retrospectively treated as having arisen at the correct point in time (i.e. just before the pension benefits became payable).

133 Section 11(5) sets out what scheme regulations made under section 10(1) may in particular specify, which includes how and when an election may be revoked and who may make an election in respect of a deceased member. However, under section 11(6), an election cannot lapse or be revoked after any benefits have become payable to or in respect of the member. Under section 11(7), where an election lapses or is revoked, the election is treated as never having had effect.

Section 12: Power to deem election by virtue of section 10 to have been made

134 While it is less likely that an active or deferred member will fail to engage with the decision-making process than a pensioner member or representative of a deceased member (as they will need to communicate with the scheme in order for their pension to be put into payment when they retire), it is still possible that the member will not make a decision.

135 Section 12 therefore provides that scheme regulations made by virtue of section 10(1) may make provision about cases where no decision as to whether an election is to be made is communicated to the scheme before the specified deadlines set in accordance with section 11(1). This might be appropriate, for example, if the member or survivor lacks the legal capacity to make a decision.

136 Section 12(2) and 12(3) set out that provision may be made to deem an election to have been made (so the member would be entitled to new scheme benefits) and to specify conditions that are to be met if that is to be the case. Section 12(3) envisages that such conditions could relate to the value of benefits payable. This would, for example, allow a scheme to deem an election to be made where it is clear this would lead to a better outcome for the member.

Section 13: Persons with remediable service in more than one Chapter 1 legacy scheme

137 This section provides that where a person has remediable service in an employment or office that is pensionable under more than one legacy scheme, an election under section 10 applies in all of those schemes. Section 13(2) and 13(3) specify how the election made under section 10 applies in relation to a person's remediable service in another scheme. Where the person is also an active or deferred member in relation their remediable service in the employment of office under another scheme, the election has effect in that scheme as an election under section 10 and new scheme benefits will be payable in relation to the remediable service. Where the person is a pensioner member in relation to their remediable service in the employment or office under another scheme, or is deceased, the election has effect in that scheme as an election under section 6 and therefore new scheme benefits are payable in relation to the remediable service.

Section 14: Pension benefits and lump sum benefits: pensioner and deceased members

138 This section sets out the treatment of overpaid and underpaid pension benefits and lump sum benefits where a pensioner member or a representative of a deceased member is entitled to pension benefits from a legacy scheme in relation to a period of remediable service. Corrections may be necessary owing to the different pension benefits and lump sum benefits that arise as a consequence of the operation of section 2(1) and the section 6 election process.

139 Section 14(3) applies when a pensioner member or a representative of a deceased member makes an election to receive new scheme benefits, or if later, on the coming into force of section 2(1). If no election has been made to receive new scheme benefits, section 14(3) applies immediately before the end of the period during which a pensioner member or a representative of a deceased member could have made such an election (see definition of "the operative time" in section 14(7)). Under section 14(3), if the aggregate of pension benefits paid from a legacy scheme in respect of the remediable service exceeds the aggregate of pension benefits due from the legacy scheme (as a result of section 2(1) and 6(4) and (5)), then the beneficiary must pay the difference to the scheme. Section 14(4) states that where a member received less pension benefits than they are now entitled to under the legacy scheme, then the scheme manager will pay the difference.

140 Section 14(5) and 14(6) make equivalent provision to 14(3) and (4) in relation to any lump sum benefits already paid in respect of a member's remediable service and any that the member is entitled to under the legacy scheme.

141 Where a pensioner member or the representative of a deceased member elects to receive new scheme benefits in relation to a period of remediable service (under section 6(1)) they may be entitled to higher or lower benefits as a result of their choice. Similarly, where a pensioner member or the representative of a deceased member decides not to make a section 6 election in relation to a period of remediable service they may be entitled to higher or lower benefits, where the remediable service includes a period that would have been pensionable under a Chapter 1 new scheme but for section 2(1). Section 14(3) to 14(6) provide for any overpayment or underpayment in benefits before the choice was made and came into effect to be corrected.

142 The reason for treating lump sum benefits and pension benefits separately is that the payments are assessed differently for the purposes of determining whether tax is due on the payments. Pension lump sums paid to pensioner members and in relation to those who died before reaching age 75 are usually exempt from tax. The legacy pension schemes generally (but not universally) provide for an automatic lump sum to be paid, although sometimes with both an automatic lump sum and an option to convert some of the separate continuing pension to lump sum (known as "commutation"). However, the new schemes generally do not provide for any automatic lump sum, but allow a member to commute a proportion of their pension to receive a lump sum payment instead. Where a pensioner member or the representative of a deceased member becomes entitled to receive alternative benefits to those that have already been paid (i.e. makes an election to receive new scheme benefits rather than legacy scheme benefits in relation to a period of remediable service that was pensionable service under a Chapter 1 legacy scheme (under section 6), or does not make such an election and therefore becomes entitled to legacy scheme benefits rather than new scheme benefits in relation to remediable service that would, apart from section 2(1), have been pensionable service under a Chapter 1 new scheme) they will also need to make a decision about any lump sum payable, including whether to convert that to or from pension. Where they choose to receive a lower lump sum than that already paid, they will need to repay the difference to the scheme, but they will be able to instead choose to receive an equivalent or larger lump sum where the existing scheme provisions allow. The same choices will be available to members as would have been available to them had they been members of the relevant scheme during their remediable service.

Section 15: Pension contributions: pensioner and deceased members

143 Section 15 provides for any overpayment or underpayment of member contributions made in relation to the remediable service of a pensioner or deceased member to be corrected. By virtue of section 2(4), contributions liabilities are unaffected by section 2 for any member that is retrospectively returned to the legacy scheme under that section. However, when compared to the contributions that the member would have paid, had they always been in their legacy scheme, there may be a notional over or underpayment. Similarly, where a member opts for new scheme benefits, they may have paid more or less in contributions than they would have had they been a member of the new scheme, leading to a notional over or underpayment of contributions.

144 Section 15(3) and 15(4) provide that where at the operative time (see definition at section 15(5)), in relation to remediable service, there is a difference between the amount of member contributions paid by a pensioner or deceased member and the amount of member contributions that would have been paid by that pensioner or deceased member to the relevant legacy scheme, any surplus or shortfall must be covered. In other words, section 15(3) provides that the scheme manager must pay compensation in respect of any overpaid

contributions, while section 15(4) provides that the pensioner or a representative of a deceased member must pay to the scheme any amounts required in contributions to make up an underpayment.

145 Section 15(5) defines the operative time. If an election under section 6 is made to receive new scheme benefits then the operative time is either the time the election is made, or if later, the coming into force of section 2(1) in relation to the Chapter 1 legacy scheme. If no election is made, the operative time is the end of the section 6 election period in relation to the pensioner or deceased member.

146 Section 15(6) defines the term "the paid contributions amount" and includes any member contributions paid to a Chapter 1 legacy or new scheme and, where an election has been made under section 5 for opted-out service to be reinstated, any contributions paid to a partnership pension account.

147 Section 15(7) provides that in determining the contributions that have been paid by a pensioner or deceased member under section 15(3) and 15(4), where the contributions were to a partnership pension account, that amount includes any tax relief deducted at source in relation to the contributions.

148 Section 15(8) defines the term "the adjusted contributions amount", which is the amount of contributions that the pensioner or deceased member would have paid in relation to their remedial service had they always been a member of the relevant scheme, reflecting whether they have chosen to receive legacy or new scheme benefits in relation to that service.

149 The reason for taking this approach is to ensure that pensioner or deceased members pay the correct contributions for the benefits that they receive. In most of the public service schemes, contributions rates are the same for legacy schemes and new schemes; however there are differences in some of the schemes and, further, the definition of pensionable pay will also vary between some legacy schemes and new schemes (for example overtime and allowances are not usually pensionable in a final salary scheme, but might be in a career average scheme). Section 18(2) and 18(3) makes further provision for an adjustment so that the member is placed in the correct position net of tax.

Section 16: Pension contributions: active and deferred members (immediate correction)

150 This ssection provides for the correction of any overpayment or underpayment of member contributions made in relation to the remediable service of active and deferred members at the time when section 2(1) comes into force, where pensionable service that would otherwise have been service in the new scheme is returned to the legacy scheme by virtue of ssection 2(1).

151 As under section 15, these member's contributions liabilities are unaffected by section 2(1) (due to section 2(4)), but when compared to the contributions that they would have paid had they always been a member of the legacy scheme, they may have paid more or less.

152 Section 16(3) and 16(4) provide that where, pursuant to section 2(1), there is a difference between the amount of member contributions paid by an active or deferred member and the amount of member contributions that would have been paid by that active or deferred member had they always been in the legacy scheme, the surplus or shortfall must be covered. In other words, section 16(3) provides that the scheme manager must pay compensation for any overpaid contributions, whilst section 16(4) provides that the active or deferred member, or, where the member is deceased, their personal representatives, must pay to the scheme any amounts required to make up an underpayment.

153 Section 16(5) defines the term "the paid contributions amount", which includes any member contributions paid to a Chapter 1 legacy or new scheme and any contributions paid to a partnership pension account where they have made an election under section 5.

154 Section 16(6) provides that in determining the contributions that have been paid by an active or deferred member under section 16(3) and 16(4), where the contributions were to a partnership pension account, that amount includes any tax relief deducted at source in relation to those contributions.

155 Section 16(7) defines the term "the adjusted contributions amount", which is the amount of contributions that the active or deferred member would have paid in relation to their remediable service in the legacy scheme had they always been a member.

156 This section applies to active and deferred members when section 2(1) comes into force and as a result any remediable service that would, apart from section 2(1) had been pensionable service in a Chapter 1 new scheme is now treated as pensionable service under the relevant Chapter 1 legacy scheme. Section 16 ensures, in combination with section 18, that such members are put into, so far as possible, the same position with respect to contributions that they would have been in had they always been in the legacy scheme. The contributions under the legacy scheme may differ from those that were previously paid under the new scheme and either compensation will be due from the scheme manager or a payment will be required from the member or their personal representatives to correct the contributions position. Some members may end up opting for new scheme benefits before their benefits are paid (making use of the election in section 10). In this case, further provision is made later in the Act to adjust their contributions again to reflect this (section 17). Section 18(2) and 18(3) makes further provision for an adjustment so that the member is placed in the correct position net of tax.

Section 17: Pension contributions: active and deferred members (deferred correction)

157 This section concerns the correction of contributions where an active or deferred member of a Chapter 1 legacy scheme elects to receive new scheme pension benefits under section 10.

158 Section 17(3) and (4) provide that where, immediately after the end of the period during which an election for new scheme benefits may be made under section 10(1), the aggregate of the pension contributions paid by a member up to that point and the contributions that would have been paid to the relevant new scheme are different, the surplus or shortfall must be covered. Section 17(3) provides that the scheme manager must pay compensation for any overpaid contributions and section 17(4) provides that the member or, where the member is deceased, their personal representatives must pay the scheme an amount to make up any underpayment.

159 Section 17(5) defines the term "the paid contributions amount" and includes any member contributions paid to a Chapter 1 legacy or new scheme and any contributions paid to a partnership pension account in respect of their service where they have made an election under section 5.

160 Section 17(6) provides that in determining the contributions that have been paid by a pensioner or deceased member under section 15(3) and 15(4), where the contributions were to a partnership pension account, that amount includes any tax relief deducted at source in relation to the contributions.

161 Section 17(7) provides that the paid contributions amount includes any amounts paid either by the scheme to the member or by the member to the scheme under section 16 (immediate correction).

162 Section 17(8) defines the term “the adjusted contributions amount”, which is the amount of contributions that the member should have paid in relation to the new scheme benefits they have chosen to receive.

163 This section applies where an election to receive new scheme pension benefit is made in relation to an active or deferred member under section 10. This section ensures that they are put into, so far as possible, the position with respect to contributions that they would have been, had they always paid contributions on the basis of new scheme membership, accounting for contributions already paid. Section 18(2) and 18(3) makes further provision for an adjustment so that the member is placed in the correct position net of tax.

Section 18: Powers to reduce or waive liabilities

164 Section 18 provides that scheme regulations for a legacy scheme may make provision whereby a liability on an individual to repay overpaid benefits (section 14) or to pay an amount in respect of underpaid contributions (section 15, 16 or 17) is reduced or waived. This power is intended to allow schemes discretion where sums are owed to schemes by members as a result of corrections made under section 14, 15 ,16 or 17. For example, where a pensioner member has been overpaid their pension benefit and reimbursing the pension scheme would cause hardship, the pension scheme could write off part of the liability. Similarly, section 18 provides that scheme regulations for a legacy scheme may make provision where a scheme manager has a liability to pay compensation to a member under section 15, 16 or 17, to either reduce that amount to reflect excessive tax relief or, with respect to amounts owed under section 16, by agreement with the member, waive it entirely.

165 Section 18(1) allows scheme regulations to make provisions to reduce or waive a liability owed by a person to the scheme under section 14.

166 Section 18(2) allows schemes to make provisions to reduce or waive a liability owed by a person to the scheme under section 15, 16 or 17.

167 Section 18(3) and 18(4) envisage that scheme regulations may include provision that reduces liabilities by tax relief amounts. This reflects the fact that payments due under this Chapter may be made at a different time to when they would have been made if the member had always been entitled to the pension benefits that they choose to receive and, as a result, might have received different tax treatment. For example, where a member would have been entitled to tax relief if payments had been made in a different tax year, but has lower taxable income at the time the payment is actually made (e.g. because their earnings are below the personal allowance) or if a member is no longer active, they will not be eligible for tax relief. Under this provision, scheme regulations can reflect that and reduce the liability accordingly.

168 Section 18(5) to 18(7) envisage that schemes may reduce or waive compensation owed by the scheme to individuals under section 15, 16 or 17. In particular, it is intended that the compensation may be reduced to reflect tax relief amounts. The policy intent of these sections is to ensure that where a member is either returned to the legacy scheme under section 2 or makes an election to receive new scheme benefits under section 6 or 10, they are returned to the correct net position with respect to contributions and tax relief.

169 Section 15, 16 and 17 correct the member’s contributions position by either allowing the scheme to pay compensation where there has been an overpayment of contributions or requiring a payment from the member to make up for underpaid contributions. These sections ensure that the member’s position is corrected for any excess tax relief received for contributions that were historically paid. For example, where a member has previously overpaid contributions, they will be due compensation from the scheme. However, they will

have received excessive tax relief on the higher amount. This section allows schemes to reduce the compensation paid to the member by the amount of the excess tax relief to ensure that the member is returned to the correct position with regards to their contributions and tax relief.

170 Section 18(8) provides that scheme regulations may make provision to reduce or waive, with the member's agreement, any liability for the scheme to pay members compensation in relation to overpaid contributions under section 16. The purpose of this is to allow members to defer any correction to their contributions position until the point their benefits are paid and their choice of legacy or new scheme benefits is known, thereby avoiding the need to correct the contributions position twice where the member envisages electing to receive new scheme benefits in the future.

Section 19: Pension credit members

171 Pension sharing orders for divorces or dissolutions of civil partnerships generally award the member's ex-spouse a percentage of the value of the pension at the time of the divorce. The value is expressed as a Cash Equivalent Transfer Value (CETV). The ex-spouse/civil partner then becomes a member of the pension scheme in their own right and is known as the pension credit member, with a pension equivalent to the credit. As a result of the remedy, it is possible that the value of the pension at the time of the divorce/dissolution would have been different had the member always been a member of the alternative scheme for the remedy period. This means that even if the percentage quoted in the pension sharing order remains the same, the actual amount credited to the pension credit member may have been different.

172 This section therefore enables the responsible authority for a Chapter 1 legacy scheme or a Chapter 1 new scheme (as the pension credit member may have credits in a legacy scheme, a new scheme or both depending on their particular divorce settlement) to award any additional credit due to the pension credit member as a result of the remedy. However, it does not give schemes the power to amend the pension sharing order itself.

173 This is an important part of the Government's commitment in its consultation response[15] that where the alternative CETV would have been higher, the pension credit member's benefits will be increased in proportion with the increase in CETV to reflect the additional amount.

174 Section 19(1) permits a scheme to make regulations about the resulting pension credit (the benefit awarded by the Court to the former spouse or civil partner) and the pension debit (the equivalent deduction made to the entitlement of the member with remediable service).

175 Section 19(4) envisages that scheme regulations may include provision to adjust the pension benefits of both parties to the Court order (the pension credit member and the pension debit member) to reflect a retrospective change in the entitlement relating to the period of remediable service under this Chapter. The scheme may make provision to adjust a pension debit (which relates to the member with remediable service) where the member elects to receive new scheme benefits. The scheme may make provision to adjust a pension credit on the assumption that an election is made or is not made. The reason for providing for scheme regulations to make an assumption is to enable the scheme to award the higher pension credit,

[15] See in particular paragraph A112 of the consultation response *Public Service Pension Schemes: changes to the transitional arrangements to the 2015 schemes – Government response to consultation*

based on the higher value of the legacy or new scheme benefits, and to reflect the fact that the pension credit may be accessed prior to the point where a pension debit member is able to make their election (for example, where the pension credit member is younger than the pension debit member).

176 As members with remediable service that is mixed (because they had tapered protection) will not be able to retain that mixed service under the remedy, section 19(5) provides that scheme regulations must include provision that a pension credit may only be based on the value of legacy or new scheme benefits in relation to the remedy period and cannot be based on a combination of the two.

Section 20: Voluntary contributions

177 Section 20 provides that scheme regulations may make provision about any additional pension benefits or entitlement to earlier payment of benefits that members have obtained by making additional voluntary contributions during the remediable period.

178 Section 20(2) allows schemes to adjust any rights gained from voluntary contributions in a legacy scheme where a member elects to receive new scheme benefits under section 6 (immediate choice) or section 10 (deferred choice). In particular, the rights can be varied so that they are of an equivalent value to rights the member would have secured under the new scheme if the voluntary contributions had been paid to that scheme (section 20(3)).

179 Section 20(4) envisages that scheme regulations for a Chapter 1 new scheme may provide for any rights to additional benefits or earlier payment of benefits to be extinguished. Section 20(5) provides that where such provision is made, scheme regulations must provide for alternative benefits to be awarded in the relevant Chapter 1 legacy scheme or compensation. This allows the voluntary contributions made by the member to be honoured. There are three permitted options: benefits of an actuarially equivalent value to the extinguished rights; benefits that are the same as the benefits that would have arisen had the voluntary contributions been made to that scheme; or compensation for the voluntary contributions made. Where compensation is provided the amount paid will be equal to the voluntary contributions paid, less any tax relief given which will place the member in the net position in which they would have been had they not made the voluntary contributions.

180 The policy is to allow members to retain the benefit of any additional voluntary contributions that they have made during their remediable service. Where a member does not wish to receive additional benefits when they move to the legacy scheme in relation to their remediable service, they, or in the case of a deceased member, their personal representatives, will instead be entitled to compensation for the contributions that they have made. In some of the new schemes, members were able to make voluntary contributions to buy out an actuarial reduction to their pension benefits that would otherwise apply where their benefits were brought into payment before the scheme Normal Pension Age (NPA). This type of benefit is not necessarily appropriate in the corresponding legacy scheme, where normal retirement age is typically earlier. In such cases the member would receive an alternative additional benefit in the legacy scheme, but if an election to receive new scheme benefits in relation to the member's remediable service were ultimately made, the policy is that the original benefit purchased would apply (i.e. the buy-out of actuarial reduction on early retirement).

Section 21: Transfers

181 This section provides that scheme regulations may make provisions about transfers in and out of the scheme. Where a member leaves a pension scheme they may be eligible to transfer their pension rights to another pension scheme. Where a member joins a public service pension scheme they may be able to transfer other pension rights into the scheme, including rights from another public service pension scheme. Section 21(1)(a) provides for scheme regulations

to make provision about the transfer out of remediable service. This will allow schemes to reflect, when calculating the transfer value, that members with remediable service are able to choose whether to receive new scheme benefits or legacy scheme benefits when calculating the transfer value.

182 Section 21(1)(b) to (1)(d) therefore provides for scheme regulations to make provision about transfers into the scheme in respect of rights in relation to remediable service in another public service pension scheme.

183 Section 21(1)(e) allows schemes to make equivalent provision for other transfers into a Chapter 1 scheme made during the period between 1 April 2015 and 31 March 2022. In such cases, the transfer will not have included rights in relation to remediable service (i.e. to which the member had a choice of benefits), but this section will allow for scheme to provide rights, for example, in the legacy scheme rather than the new scheme where the transfer was originally received in the new scheme, or to vary the rights to reflect a member's decision under section 6 or 10.

184 Section 21(2) provides for scheme regulations to vary the benefits arising in a legacy scheme from a transfer under section 21(1)(b) to (e) where an election for new scheme benefits is made under section 6 or 10. Section 21(3) provides that the rights may be varied so that they are of equivalent value to rights that would have been secured under another Chapter 1 scheme.

185 Section 21(4) envisages that scheme regulations may provide for any rights to benefits that would otherwise have been secured by the transfer in to be extinguished. Section 21(5) provides that where such provision is made, scheme regulations must provide for alternative benefits to be awarded in a Chapter 1 scheme. There are two permitted options: benefits of an actuarially equivalent value to the extinguished rights; or benefits that are the same as the benefits that would have arisen had the transfer in been made to that scheme.

186 Public service pension schemes and some public body pension schemes participate in an arrangement known as the Public Sector Transfer Club (the Club). The Club is concerned with the portability of pension rights in the public sector and provides that a transfer between the participating schemes is carried out on the basis that the member will receive equivalent benefits in the receiving scheme (provided the transfer is made within specified time limits). Where a member transfers remediable service from a public service pension scheme into another public service pension scheme on the Club terms, the policy is that they will continue to receive a choice of whether to receive legacy scheme benefits or new scheme benefits in the receiving scheme. The scheme will therefore calculate two separate transfers: the rights arising from the transfer of rights relating to legacy scheme benefits in relation to remediable service from the exporting scheme and those relating to rights in relation to new scheme benefits in relation to remediable service. The member will then receive legacy scheme benefits or new scheme benefits in relation to the transfer in line with any election under section 6 or 10.

Section 22: Further powers to make provision about special cases

187 This section provides that scheme regulations may make further provision about a number of areas in relation to members' remediable service.

188 Section 22(2) provides a non-exhaustive list containing specific examples of the types of provision that scheme regulations may need to make. For example, provision in relation to a member with mixed service (i.e. a member who had tapered protection), who has a period of service that entitles them to receive benefits under more than one Chapter 1 scheme, or who had a right under a Chapter 1 new scheme to buy-out an actuarial reduction to their pension benefits that would otherwise apply if they retired before the scheme normal retirement age, or who is partially retired. Section 22(6) describes the broad variety of provision that may be made under section 22, or under section 19, 20, 21.

189 Section 22(2)(e) allows scheme regulations made under section 22 to make provision about the benefits payable where a member dies, in respect of surviving children who do not live in the same household as a surviving adult. This will allow schemes to deliver the policy set out in the Government's consultation and consultation response, which set out that where a member has died and a child pension is already in payment which would otherwise be impacted by a decision taken by someone outside the child's household, that pension will be protected. Section 22(2)(f) and (g) enables provision to be made in scheme regulations about cases in which a person has remediable service as a teacher which is excess teacher service or cases in which a person has pensionable service as a teacher which takes place in the remedy period but is not remediable service (i.e. teachers who would not be eligible to join the LGPS because there was no existing relationship between the LGPS and the employer). Section 22(2)(h) allows scheme regulations made under section 22 to make provision for cases in which a member has a Partnership Pension Account. Section 5 of the Bill already provides for members of the civil service, who opted to have a Partnership Pension Account, to be able to be reinstated to the appropriate legacy scheme where they wish, and meet any criteria that may be specified in scheme regulations. However, there may be cases where that is not possible, for example where the member has died. This provision therefore provides schemes with powers to make provision to take a different approach where needed to provide a remedy in such cases. Section 22(2)(i) allows scheme regulations made under section 22 to make provision for cases in which a person who has remediable service is made redundant. This will ensure that schemes are able to make provision for a member to make their deferred choice to receive new scheme benefits at the time their employment ends. This approach will be needed in cases where the member's redundancy payment is calculated by reference to the pension scheme in which they have remediable service, which is the case for example in the Armed Forces.

190 Section 22(2)(j) provides that schemes can make appropriate provision for cases where the administrator of a Chapter 1 scheme pays a member's liability to a lifetime allowance charge, or an annual allowance charge and the member's benefits are reduced in consequence. Schemes will, for example, be able to make provision to adjust a reduction of member benefits that was applied previously where the member's liability to a charge changes as a consequence of the remedy provided under Chapter 1. Section 22(2)(k) allows provision to be made about cases in which a person's remuneration may be determined by reference to whether their service is, or is eligible to be, pensionable service under a Chapter 1 scheme. Section 22(2)(l) enables provision to be made in relation to members of the armed forces who would be entitled to an incapacity lump sum under the new armed forces pension scheme, even if they would not have been entitled to such a payment under the rules of the legacy scheme.

191 Section 22(3) provides that scheme regulations for a Chapter 1 new scheme may make provision about injury and compensation benefits payable to or in respect of a member with remediable service. Section 22(4) allows such provision to be made in particular by amending the relevant injury or compensation scheme and section 22(5) defines which schemes and benefits are in scope of the power. Where Chapter 1 of Part 1 retrospectively alters pension benefits payable to or in respect of a person, this may require retrospective changes also to be made to the injury or compensation benefits to which the person is entitled (for example where their injury or compensation benefits amount is calculated in a way that takes account of the amount of pension benefits payable).

Section 23: Power to pay compensation

192 This section provides for scheme managers to pay compensation in respect of any losses incurred by a member or, in the case of deceased members, their representatives, as a result of the discrimination that arose or the remedy under this Act. Section 23(2) allows schemes to make regulations for an employer to reimburse amounts paid out by a scheme manager under section 23(1).

193 Section 23(3) defines the instances where a loss in this section is compensatable. A compensatable loss is one that meets any of the three conditions set out at section 23(4) to 23(6) and is of a description specified in Treasury directions.

194 The first condition is that the loss is attributable to, or is reasonably regarded as attributable to, a relevant breach of a non-discrimination rule. The second condition is that the loss is attributable to the application of any provision of, or made under, Chapter 1. Both these losses can include 'Part 4 tax losses' – see section 23(8) and 23(9). The third condition refers to a specific situation where new scheme benefits are chosen in the context of pensioner and deceased members. The third condition applies where the member is a relevant member and the loss is a "Part 4 tax loss" (see section 23(9)) that is attributable to the value of rights in respect of the remediable service under a Chapter 1 new scheme.

195 Section 23(7) defines a relevant member and section 23(8) specifies that, in this section, a "loss" includes a loss of any kind, in particular, a Part 4 tax loss.

196 Section 23(9) defines a "Part 4 tax loss" as a loss arising as a result of the member either incurring a charge, or incurring an increased charge, under Part 4 of Finance Act 2004 or not being entitled to a relief, or being entitled to less relief, under that Part of that Act. This ensures that compensation can be paid in respect of members where HMRC's statutory time limits do not allow for correction of the amount of tax paid.

197 Section 23(10) sets out that a loss does not include an amount that is already payable under Chapter 1 or under any other regulations made by virtue of the Chapter. Section 23(13) ensures that compensation in respect of losses is not paid in relation to members where they or their personal representatives have already received compensation through an order of a court or tribunal or otherwise.

Section 24: Indirect compensation

198 This section allows scheme managers to give members entitlements to additional benefits where the member may not have been able to access the compensation scheme.

199 This is to allow schemes to increase people's benefits when they retire instead of providing compensation. There may be instances where the member has paid a tax charge using "scheme pays", where the amount of benefits they would have received is reduced at retirement. This allows those benefits to be reinstated where there is equivalent amount of compensation entitlement.

Section 25: Remedial arrangements to pay voluntary contributions to legacy schemes

200 This section provides that scheme regulations for a Chapter 1 legacy scheme may make provision giving members with remediable service the facility to enter into new arrangements to pay voluntary contributions.

201 Section 25(2) sets out that provision may be made in relation to members, other than deceased members, who have remediable service.

202 Section 25(3) provides that scheme regulations may permit a member to enter into new arrangements to pay voluntary contributions only if they can show that it is more likely than not that they would have entered into similar arrangements, but for the unlawful discrimination.

203 Section 25(4) allows for the provision made under scheme regulations, in particular, to adjust the amount of member voluntary contributions that are due under a new arrangement to reflect the tax treatment of those contributions. This is to allow for members to be charged an amount that is equivalent to the net amount that they would have paid had the contributions instead been made during their remediable service, reflecting the fact that they may not be eligible to receive tax relief on the voluntary contributions paid under a new arrangement.

204 Section 25(6) prevents scheme regulations from permitting members to enter into new voluntary contribution arrangements after one year from the date a remediable service statement is first provided in relation to the member, or such later time as the scheme manager considers reasonable in all the circumstances.

205 Section 25(7) confirms that the time limit in section 25(6) does not affect the continued operation after that time of any remedial arrangements entered into before then.

Section 26: Interest and process

206 This section provides that scheme regulations may make provision about how interest is calculated and paid on amounts that are owed by a person to the scheme or by the scheme to a person, and about the process by which amounts owed are paid. This is to ensure that members who have underpaid their contributions are not placed in an advantageous position compared to their comparators in the scheme who have been paying the correct level of contributions throughout, so would not have had the benefit of the additional money over time. Similarly, interest will be paid on amounts owed to members by the scheme where they would have been received in previous periods or amounts owed to the scheme in relation to overpayments made in previous periods.

207 Section 26(2) envisages that provision could be made about matters such as providing for amounts to be repaid by instalments, netting off amounts owed to a person against amounts owed by a person and conferring rights of appeal against a decision taken under the regulations.

Section 27: Treasury directions

208 This section details the specific powers outlined in the Act which must be exercised in accordance with Treasury Directions. For devolved schemes in Northern Ireland, Directions will be given by the Department of Finance as explained by the definition of 'Treasury directions' in section 38(1). Respondents to the Government's consultation on changes to implement a remedy for public service pensions were supportive of central direction to ensure consistency across and within schemes in the way the remedy is implemented.

209 Section 27(4) provides that the Treasury directions relating to the calculation and payment of interest may only be made may only be made after consultation with the Government Actuary.

Section 28: Scheme rules that prohibit unauthorised payments

210 This section is designed to override any scheme rules that prevent an unauthorised payment being made where such a payment is permitted or required by this Act, where Treasury directions so provide. For example, schemes may be required to make payments in respect of underpaid lump sum benefits by virtue of section 13 that could be unauthorised payments due to the passage of time between the original lump sum being paid and the further payment.

Section 29: Remediable service statements

211 This section provides that legacy scheme regulations must make provision requiring the scheme manager to provide information in respect of each member with remediable service about the legacy scheme benefits and the benefits that would be available under the scheme in respect of the member's remediable service were an election under section 5, 6 or 10 to be made. Information must also be provided to enable the recipient to decide whether they are entitled to enter new arrangements to pay voluntary contributions to a Chapter 1 legacy scheme. This information will enable members to make an informed decision about whether to elect to retain legacy scheme benefits, receive new scheme benefits, or opt in to receive benefits in respect of their remediable service, or whether they wish to enter an arrangement to pay voluntary contributions.

212 Section 29(3) and 29(4) state the necessary conditions for such information to be provided in respect of a member.

213 Section 29(5) sets out certain things which a remediable service statement must include.

214 Section 29(6) provides that Treasury directions (as defined in section 38(1)) may set further requirements about remediable service statements. Treasury directions may require certain information to be included in a remediable service statement, the form it is to take, how and to whom it is to be provided, and whether it is to be included with or provided alongside a member's annual benefit statement.

215 Section 29(7) to (10) requires remediable service statements to be provided on or before the day after the final day of the period of 18 months beginning on the day on which section 2(1) comes into force (or such later day as the scheme manager considers reasonable), and then annually for active members. After the initial statement, deferred members may once in each 12-month period request to receive a remediable service statement. This is consistent with the requirements placed on schemes by the Pensions Act 1995 in relation to annual benefit statements.

216 Section 29(11) confirms that schemes may comply with their obligation to provide a remediable service statement before the coming into force of this section or any other provision of this Chapter.

Section 30: Section 61 of the Equality Act 2010 etc

217 This section disapplies section 61 of the Equality Act 2010 (and the equivalent provision in Northern Ireland) for the purposes of determining whether a member's remediable service is pensionable in a new or legacy scheme. The Act provides a remedy for the discrimination that arose in public service pension schemes. In doing so, it directly determines which scheme a person is a member of in relation to their remediable service. This provision will prevent any inconsistency in interpretation or application between section 61 of the Equality Act 2010 and the provisions contained in or made under this Act. As set out in section 31(1), this section does not apply in relation to a person's remediable service in an employment of office if an immediate detriment remedy has been obtained in relation to the service, in order to ensure

the Act does not override or interfere with any remedy already provided under section 61 of the Equality Act, except to the extent that provisions are necessary to ensure consistent treatment.[16]

Section 31: Application of Chapter to immediate detriment cases

218 This section sets out how Chapter 1 applies in relation to a person's remediable service in an employment or office if an immediate detriment remedy has been obtained in relation to the service. In some cases, either a full or partial remedy may have been obtained for the discrimination identified by the Court of Appeal, prior to this Act and scheme regulations coming into force. Accordingly, the policy intention is to ensure that the remedy that those in this position have already received is respected, and appropriate alternative provision may be made by scheme regulations to address their individual circumstances in order to ensure that the discrimination is rectified. In particular, the intention is to ensure that these persons are not compensated twice, that the Act does not override any prior court or tribunal orders, and that there is provision for scheme regulations to make provision to correct or 'top up' any aspects of the remedy already provided to ensure consistent and fair treatment.

219 Section 31(1) sets out that sections 2 to 30 do not automatically apply in relation to a person's remediable service in an employment of office if an immediate detriment remedy has been obtained in relation to the service. This is to ensure that the immediate detriment remedy that has been obtained is not undermined – for example by granting a second opportunity to make an election - and that the Act does not override any prior court or tribunal orders, or any prior agreement between the scheme manager and another person. Section 31(1) does not carve out section 1 of the Act. This is so that relevant service counts as remediable service where this is necessary.

220 Section 31(2) sets out that scheme regulations may make provision for those who have rights in respect of remediable service in relation to which an immediate detriment remedy has been obtained, in order to put them, so far as possible, in the position that they would have been in if there had been no relevant breach of a non-discrimination rule in relation to their service.

221 Section 31(3) sets out that these provisions may include provisions to apply any of sections 2 to 30 of the Act, or to make equivalent provisions in scheme regulations, either with or without modifications. The purpose of this is to allow scheme regulations to apply particular provisions of the Act to persons who have rights in respect of remediable service in relation to which an immediate detriment remedy has been obtained, to rectify the discrimination. In some cases, achieving that may require a provision that differs from the provisions in the Act for persons with remediable service where an immediate detriment remedy has not been obtained and this section, together with the broader power contained in section 31(2), is intended to allow for that.

222 Section 31(4) sets out that for the purposes of this chapter a "non-discrimination rule" is a rule that was included in a Chapter 1 legacy scheme as a result of (a) either section 61 of the Equality Act 2010, or (b) paragraph 2 of Schedule 1 to EEAR(NI) 2006 Employment Equality (Age) Regulations (Northern Ireland) 2006.

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[16] For Schemes in Northern Ireland paragraph 2 of Schedule 1 to Equality (Age) Regulations (NI) 2006 makes comparable provision to section 61 of EA 2010.

223 Section 31(5) sets out that a relevant breach of that rule is one that arises from the application of “transitional protection” or “tapered protection” made under section 18 of PSPA 2013 or section 18 of PSPA(NI) 2014.

Section 32: Whether an “immediate detriment remedy” has been obtained

224 This section defines whether an immediate detriment remedy has been obtained under section 61 of the Equality Act 2010 or paragraph 2 of Schedule 1 to the EEAR(NI) 2006 in respect of a person’s remediable service in an employment or office. This is where either full or partial remedy for the discrimination identified by the Court of Appeal has been obtained prior to this Act and scheme regulations coming into force in relation to their scheme.

225 Section 32(2) sets out that an immediate detriment remedy has been obtained in relation to a person’s remediable service in an employment or office if a court or tribunal has determined that, as a result of a non-discrimination rule, any person has any rights under a Chapter 1 scheme in respect of the remediable service, and the scheme manager has paid pension benefits or compensation in accordance with the determination, or has taken any other step to implement the determination.

226 Section 32(3) sets out that an immediate detriment remedy has been obtained in relation to a person’s remediable service in an employment or office if there has been an agreement between any person and the scheme manager of a Chapter 1 scheme that, as a result of the non-discrimination rule, the person has any rights under a Chapter 1 scheme in respect of the remediable service, and the scheme manager has paid benefits or compensation in accordance with the agreement, or has taken any other step to implement the agreement.

Section 33: Meaning of “Chapter 1 scheme” etc

227 This section contains the definitions of “Chapter 1 scheme”, “Chapter 1 new scheme” and “Chapter 1 legacy scheme”.

228 Section 33(2) provides the definition of a Chapter 1 new scheme by reference to section 1 of PSPA 2013 or section 1 of PSPA(NI) 2014 and does not include a scheme for local government workers or a scheme for holders of a judicial office.

229 Section 33(3) defines a Chapter 1 legacy scheme by reference to PSPA 2013 or PSPA(NI) 2014 (that is not a judicial or local government scheme).

Section 34: Meaning of “new scheme benefits”

230 This section defines “new scheme benefits” for remediable service for this Chapter.

231 Where a member has remediable service and elects to receive new scheme benefits, they are entitled to receive benefits that are the same as those that would have been payable in relation to that service had they been a member of the new scheme. For example, where a member with remediable service retires at age 64 they would be entitled, if they elect for new scheme benefits, to receive the same benefits in relation to that service as would have been paid from the new scheme at that time (with a fair adjustment to reflect the fact they were being paid before the member’s NPA if that is higher than age 64 in the new scheme). Where a member with remediable service retires and elects for new scheme benefits, but would not have been entitled to the immediate payment of new scheme benefits at that time (for example, where they retired before the new scheme minimum pension age) but would be entitled to a deferred new scheme pension instead, then they would be entitled to a benefit equal to that deferred benefit.

232 Where benefits are paid in relation to remediable service, they are paid from the legacy scheme regardless of whether a member makes an election for new scheme benefits or not.

Section 35: Meaning of "legacy scheme contributions" and "new scheme contributions"

233 This section defines legacy scheme contributions and new scheme contributions in relation to a member's remediable service. This is relevant to sections 15, 16 and 17, which are concerned with the correction of overpaid and underpaid contributions.

234 Section 35(2) defines legacy scheme contributions as pension contributions payable by the member under the relevant Chapter 1 legacy scheme as if the service had, at the time it took place, been pensionable under that scheme.

235 Section 35(3) defines new scheme contributions as pension contributions payable by the member under the relevant Chapter 1 new scheme as if the service had, at the time it took place, been pensionable under that scheme.

Section 36: Meaning of "opted-out service"

236 This section defines the term "opted-out service" as referring to service in which the conditions described in section 1 are met but for the second condition, which would have been met had the person not opted-out of the pension scheme:

a. that the service relates to a period when the discrimination arose;

b. that the member was eligible for transitional protection or would have been eligible for transitional protection but for the discriminatory requirement in the schemes;

c. that the member was on or before 31 March 2012 a member of a legacy scheme, or in the case of certain schemes for firefighters, eligible to be a member of such a scheme; and

d. that the member does not have a disqualifying break in service falling within the period set out in section 1(6).

237 Section 36(2) also covers partnership pension accounts, a specific Civil Service defined contribution scheme which members may have elected to join instead of accruing Chapter 1 scheme benefits.

Section 37: Scheme regulations

238 The definition of "scheme regulations" is contained in this section. This section clarifies that the definition for scheme regulations is the same as it is in the PSPA 2013 and PSPA(NI) 2014, where scheme regulations made under s.1(4) of those Acts established the Chapter 1 new schemes and made related provision.

239 Section 37(2) confirms that, where Chapter 1 of the Act grants a power to make provision by means of "scheme regulations for a Chapter 1 legacy scheme", that means that the power is to be exercised by the responsible authority for the Chapter 1 new scheme that is connected with the Chapter 1 legacy scheme. The responsible authority may exercise that power by amending the Chapter 1 legacy scheme in the scheme regulations. Accordingly, the policy intention is that the responsible authorities for the Chapter 1 new schemes may use scheme regulations (as defined in s.1(4) PSPA 2013 and s.1(4) PSPA(NI) 2014) to exercise the powers contained in the Act, and may use those scheme regulations to make the necessary amendments to both the new schemes and the legacy schemes within the same statutory instrument (i.e. the scheme regulations).

240 Section 37(3) contains the definition of "responsible authority", which has the same meaning as in the PSPA 2013 and PSPA(NI) 2014.

Section 38: Interpretation of Chapter

241 This section provides the definitions for terms found in this Chapter.

Chapter 2: Judicial Schemes

Section 39: Meaning of "remediable service"

242 This section is the judicial scheme equivalent of section 1. It defines "remediable service" and sets out five conditions to establish whether a member's period of service is eligible for being in scope of the legislation:

a. first, that the remedy period service takes place at a period beginning with 1 April 2015 and ending on 31 March 2022;

b. second, that the service was pensionable service under a judicial scheme. Section 39(4)(b) clarifies that service is "pensionable service under a judicial scheme" even where a judge opted out of the 2015 reformed scheme;

c. third, that the member was in pensionable public service before 31 March 2012;

d. fourth, that the member has not had a "disqualifying gap" in service (see section 39(9)); and

e. fifth, that the member is under 55 on 1 April 2012. This is because "protected" members, who never left the legacy scheme because they were over 55 on 1 April 2012, are not in scope of the remedy.

243 Judges were able to opt out of the 2015 reformed scheme and instead join a partnership pension account ("PPA") – a registered stakeholder pension scheme. As a member of the PPA, a judge holds an account with a nominated third-party provider (Prudential plc) into which the member and the "employer" pay contributions. Section 39(8) ensures that, for those who opted for PPA, that time as a PPA member counts as "remediable service" in the same way that those who opted out of judicial pension altogether qualify for the remedy (section 39(4)(b)).

244 Section 39(9) excludes those with a gap in pensionable public service of more than five years (who would otherwise be in scope) from the remedy.

245 Section 39(10) states that the effect of section 61 Equality Act 2010 and paragraph 2 of Schedule 1 to the Employment Equality (Age) Regulations (Northern Ireland) 2006 (non-discrimination rule) and sections 2, 42 and 45 of this Act (under which service may be treated as pensionable, or not pensionable) are to be disregarded for determining pensionable service under a particular scheme. This is intended to ensure that these provisions, which might otherwise have shifted people into different schemes, are disregarded for the purposes of determining which scheme a judge's service is in.

Section 40: Legacy scheme elections

246 This section sets out how a legacy scheme election is made.

247 Section 40(1) provides that a legacy scheme election may be made if a judge has remediable service (as defined in section 39) and has not made a 2015 scheme election. A judge with salaried remediable service in the PPA may not make a legacy scheme election if they have not complied with the requirement in section 41 regarding the transfer and surrender of their PPA rights. In the case where a judge is deceased see section 46 for who can make the election.

248 Section 40(4) sets out how and when a legacy scheme election is to be made and provides that such an election is irrevocable. Section 40(5) provides that an election takes place at the end of the election period or, in the case of a judge with salaried remediable service in the PPA, after the requirement to transfer and surrender rights under section 41, if later.

Section 41: Partnership pension account: requirement to transfer and surrender rights

249 Section 41(1) addresses the position of judges with salaried remediable service in the PPA. While these judges are entitled to full legacy scheme benefits, provision is needed to ensure that they do not receive double compensation. This is achieved by requiring a transfer of PPA assets to their legacy schemes.

250 Section 41(2) and 41(3) require that, before making a legacy scheme election, a PPA judge (or, if they are deceased, the person by whom a legacy scheme election may be made) must notify the scheme of their intention to instigate and facilitate steps to (a) transfer any relevant PPA assets and liabilities to the legacy scheme and (b) surrender any entitlement to a pension that would otherwise arise in respect of these assets.

251 Section (41)(c) also requires that where a transfer of any relevant assets or liabilities from the PPA (otherwise than in the course of a transfer to the relevant judicial legacy scheme) has already been made, an amount equivalent to the transfer out must be paid by the appropriate person. Given the potential complexity arising in respect of transfers, the amount to be paid is to be determined by the relevant authority, after consulting the Government Actuary.

252 Section 41(4) to 41(6) apply the same requirements as section 41(1) to 41(3) but where a person has remediable service in a fee-paid rather than salaried judicial office.

253 Section 41(8) to 41(10) provide that PPA "assets and liabilities" are referable to the contributions made by or on behalf of the judge in respect of their service. This includes mandatory and voluntary contributions made by the judge to the PPA up to the net value of contributions that would have been payable to the judge's legacy scheme. Assets and liabilities referable to any excess contributions do not need to be transferred to the judicial legacy scheme. The value of the excess is to be determined by the relevant authority, after consultation with the Government Actuary.

Section 42: Legacy scheme elections: effect

254 Section 42(1) to 42(5) provide that, when a person elects legacy scheme membership, any remediable service in the 2015 scheme, or remediable service where a judge opted out of a judicial pension, will be treated as pensionable service under the relevant judicial legacy scheme (either the fee-paid scheme or the appropriate salaried scheme). Consequently, any service previously in the 2015 scheme will be extinguished (although see section 42(7)).

255 Section 42(6) provides that the effect of making a legacy scheme election is that individuals' pensionable service will be treated as if it had always been in the legacy scheme for the purposes of determining pension benefits and pension contributions and (unless provided for otherwise) for all other purposes.

256 Section 42(7) permits a person to make a legacy scheme election while being able to retain certain member rights in the 2015 scheme, such as transfers of external pension benefits or added pension.

Section 43: Meaning of "the relevant judicial legacy salaried scheme"

257 Where a person elects legacy scheme benefits, this section defines the relevant salaried scheme as the scheme of which they were a member most recently before 1 April 2015. Where a judge was not a member of a scheme on that date, the relevant salaried scheme is JUPRA.

Section 44: 2015 scheme elections

258 This section sets out how a 2015 scheme election is made.

259 Section 44(1) provides that a 2015 scheme election may be made if a judge has remediable service (as defined in section 39) in a judicial office. Section 44(2)(a) and 44(4) provide that a 2015 scheme election may not be made if a judge previously opted out of the 2015 scheme (since they already had the option to join the scheme). There is an exception for judges who opted out to join the PPA scheme provided part of their remediable service has been in a judicial legacy scheme.

260 Section 44(2)(b) provides that an individual who has made a legacy scheme election cannot make a 2015 scheme election. In the case where a judge is deceased see section 46 for who can make the election.

261 Section 44(3) provides for how and when the election is made. It also provides that the election takes effect at the end of the election period, and that such an election is irrevocable.

Section 45: 2015 scheme elections: effect

262 Section 45(1) and 45(2) provide that, where a person makes a 2015 scheme election, any remediable service in the legacy scheme (whether salaried or fee-paid) will be treated as pensionable service under the relevant 2015 scheme and as having never been under the judicial legacy scheme.

263 Section 45(3) defines "relevant 2015 scheme". Reformed (post 2015 reform) pensions for devolved Northern Irish judges are provided for by Northern Irish legislation (unlike the legacy schemes where pension for these judges was provided by UK legislation), hence the need for section 45(3)(b).

264 Section 45(4) explains that the effect of making a 2015 scheme election is that individuals' pensionable service will be treated as if it had always been in the 2015 scheme for the purposes of determining pension benefits and pension contributions and (unless provided for otherwise) for all other purposes.

Section 46: Person by whom election is to be made

265 Section 46(1) provides that the election of scheme membership is ordinarily to be made by the judge. Where the judge is deceased, the adult survivor or (if there is none) personal representatives would make the election.

266 Section 46(2) and 46(3) define adult survivor as a surviving spouse, civil partner or other adult entitled to a pension under the judicial scheme under which the deceased judge most recently accrued pensionable service.

Section 47: Cases in which 2015 scheme election treated as made

267 For most members, if they do not make an election, they will retain their current rights. However, those with "tapered-protection" (referred to as "mixed service" in the Act) with rights in both the legacy and reformed schemes, will not be able to retain this mix of rights but will need to choose legacy or reformed scheme rights for the entire remedy period. (The effect of McCloud is that tapered protection was discriminatory and that such discrimination was unlawful.)

268 If they do not make an election, section 47(2) sets out the default position: they will be considered to have made a 2015 scheme election.

269 Section 47(3) defines "mixed service". A person has mixed service if they have pensionable service under both the legacy scheme and either the 2015 scheme or PPA (or a mix of both).

Section 48: Benefits for children where election made

270 In some cases, there may be a conflict between the interests of potential beneficiaries because of the different entitlements under the legacy and 2015 reformed schemes.

271 In the case where an adult beneficiary and a child beneficiary reside in separate households this section provides that the child is entitled to receive the more favourable pension, looked at in the round, regardless of the choice made by the surviving adult.

Section 49: Effect of elections on benefits previously paid or payable

272 Section 49(1) to 49(4) deem that, where a person has made a legacy scheme election, any benefits received from a 2015 scheme are to be treated as having been paid on a year by year basis from their legacy scheme. Section 49(1) and 49(2) apply to the salaried judicial legacy scheme; 49(3) and 49(4) apply to the fee-paid judicial legacy scheme.

273 Section 49(5) to 49(7) deem that, where a person has made a 2015 scheme election, any benefits paid from their legacy scheme are to be treated as having been paid on a year by year basis from the 2015 scheme.

274 Where, as a result of this section, the scheme owes a person a shortfall in benefits (or vice versa where there has been an overpayment to a person), this is to be paid in line with the steps set out in section 51.

Section 50: Effect of elections on pension contributions previously paid or payable

275 Section 50(1) to 50(4) deem that, where a person has made a legacy scheme election, any contributions made to a 2015 scheme are to be treated as having been made on a year by year basis to their legacy scheme. Section 50(1) and 50(2) apply to the salaried judicial legacy scheme; section 50(3) and 50(4) apply to the fee-paid judicial legacy scheme.

276 Section 50(5) to 50(7) deem that, where person has made a 2015 scheme election, any contributions made to their legacy scheme are to be treated as having been made on a year by year basis to the 2015 scheme.

277 Where, as a result of this section, the scheme owes a person a refund of excess contributions (or vice versa where there is a contributions shortfall), this is to be paid in line with the steps set out in section 52.

Section 51: Pension benefits and lump sums benefits

278 This section applies where pension and lump sums benefits have already been paid from the 'wrong' scheme (i.e. there has been an election for different scheme membership after benefits have begun to be paid from the judicial pension scheme).

279 Section 51(2) and 51(3) apply to pension benefits: 51(2) sets out that where the amount paid by the 'wrong' scheme exceeds the amount that should have been paid by the scheme of which the judges is now considered to have been a member (as a result of an election, or in respect of, the judge), the difference must be paid to the scheme; 51(3) sets out where the amount received from the 'wrong' scheme is less than would have been received, the scheme must pay the difference.

280 Section 51(4) and 51(5) apply the same principles to lump sum benefits.

281 Section 51(6) ensures that where a death lump sum has been paid to a PPA member, and a legacy scheme election is made in respect of the late member, the PPA death lump sum will be treated as having been paid under the relevant legacy scheme.

282 Similarly, section 51(7) deals with judicial service awards (JSA) that have been paid from the legacy scheme to a member who subsequently makes a 2015 scheme election. Where that arises, the JSA is to be treated as a lump sum paid from the 2015 scheme.

Section 52: Pension contributions

283 This section sets out the treatment of pension contributions already made that, as a result of previous sections, are to be treated as having been made on a year by year basis to the elected scheme. The tax consequences of earlier sections (see 42(6)(c) to(d) and 45(4)(c) to (d)) and 50(2) and 50(4) are that, where those who were previously members of the 2015 scheme elect the legacy scheme, they will owe tax to HMRC. This is because they received tax relief on their 2015 scheme contributions whereas tax relief is not available on their legacy scheme contributions.

284 The effect of section 52(2) is that where a judge has overpaid contributions, the scheme must refund this if the excess falls in a tax year in which HMRC can enforce Pay As You Earn (PAYE) corrections (in most cases only the tax year in which the choice is made, and four full preceding years).

285 Because judges will not need to pay underpaid tax in years that HMRC is unable to enforce the PAYE correction, the Act provides that the scheme will not refund excess contributions for these years, i.e. the historic contributions position will be preserved (see section 52(3)).

286 Section 52(4) requires the judge, or if the judge is deceased, their personal representatives, to pay any shortfall in contributions to the scheme.

287 Section 52(5) and (6) explain how to calculate the amount of contributions that have been paid and the amount of contributions that are payable. Section 52(5) clarifies that in calculating the contributions that have been paid, account is taken of both mandatory and voluntary contributions made by the judge to the PPA up to the level of contributions that would have been payable to the judge's legacy scheme. Section 52(6) provides that the value of member contributions to the PPA for – for the purpose of, this section means an amount less any tax relief that was received on them.

Section 53: Effective pension age payments

288 Under the 2015 scheme, the effective pension age (EPA) option enables contributions to be paid to secure a lower pension age than Normal Pension Age (but no lower than 65). Since the pension age in legacy schemes is 65, such contributions are of no benefit to a person electing to return to their legacy scheme.

289 The effect of this section is that where a judge has made EPA contributions and a legacy scheme election is made by or in respect of that judge, the judge (or if they are deceased, their personal representatives), must receive an amount by way of compensation equal to the value of the net contributions. Section 53(2) clarifies that any rights which would otherwise have been secured by the EPA payments are extinguished.

Section 54: Transitional protection allowance

290 When the 2015 scheme was introduced, judges who satisfied certain criteria were given a one-off option to opt out of the pension scheme and instead receive an allowance known as transitional protection allowance (TPA) (representing in monetary terms the 'actual' employer contribution that would otherwise have been paid to the pension scheme).

291 This section requires that if a judge who received TPA wishes to make a legacy scheme election, they, or if they are deceased, their personal representatives, must repay the amount of the TPA payment less the tax paid on the amount.

Section 55: Power to reduce benefits in lieu of paying liabilities owed to scheme

292 This section provides for scheme regulations which may reduce an amount owed by a person under Chapter 2 of the Act, by instead reducing the benefits payable to or in respect of that person under the scheme.

293 Section 55(2) provides that where a person's pension scheme benefits are so reduced in respect of an amount owed to the person's "employer", scheme regulations may require the scheme to reimburse the "employer".

Section 56: Powers to reduce or waive liabilities

294 Section 56(1) provides for scheme regulations which may reduce or waive an amount owed by a person under section 51. This is needed where, for example, a pensioner member's benefits have been overpaid as a result of electing different scheme membership. Where repaying these overpaid amounts would cause particular difficulties or hardship for the member, scheme regulations may provide for some or all of that amount to be written off.

295 Section 56(2) to 56(4) apply the principle to contributions owed under section 52, for example allowing the scheme to reduce a contribution shortfall to take account of the fact that the judge would have received tax relief on the contributions if they had actually been paid at the relevant time. This scenario will arise where tapered judges elect 2015 scheme benefits for the whole remedy period. Because they will be unable to receive tax relief on all their contributions, regulations may enable schemes to reduce the obligation to pay the contribution by the amount of tax relief lost, ensuring the judges are not left worse off as a result.

Section 57: Pension credit members

296 This section refers to divorced members where a pension sharing order has been made in respect of a public service pension as part of the financial settlement. Scheme regulations may make provision about the benefits payable to the potential pension credit member and the pension debit member.

297 Section 57(4) provides a power for scheme regulations to adjust the pension credit with the aim of providing the most valuable benefits to the pension credit member.

298 Section 57(5) addresses the position of pension debit members who may have a combination of 2015 and legacy scheme benefits. Scheme regulations must provide that pension credit members retain benefits based on either the legacy scheme or the 2015 scheme benefits but not a mix of both. This is consistent with the approach taken to mixed service generally (see section 47).

299 The section defines a pension credit member as a person in a scheme with rights attributable to a pension credit. This is because the judicial legacy scheme does not use the term pension credit member.

Section 58: Further powers to make provision about special cases

300 This section provides a power for scheme regulations to make provisions designed to respond to particular individual circumstances that arise as a result of adjusting a member's service. For example, section 58(2)(a) permits regulations in respect of members' additional voluntary contributions; and (c) does likewise for sums that have been transferred in from another pension scheme.

Section 59: Power to pay compensation

301 This section provides a power for scheme managers to pay members compensation in respect of losses incurred by members, or, in the case of deceased members, their personal representatives, either as a result of the scheme having breached a non-discrimination rule (by virtue of relevant equality legislation), or by application of any provisions of (or made under) this Chapter.

302 Section 59(3) requires compensation payments to be paid in accordance with Treasury directions.

303 Section 59(6) clarifies that "loss" includes, in particular, a Part 4 tax loss, as defined in section 59(7).

Section 60: Remedial arrangements to pay voluntary contributions to judicial schemes

304 This section makes it possible for scheme regulations to make provision giving judges with remediable service the facility to enter into new arrangements to pay voluntary contributions. The facility may only be made available for members who would have entered into similar arrangement but for the unlawful discrimination and may be made available only for a limited period or such later as the scheme manager considers reasonable in the circumstances.

305 It may be the case that a judge is not able to receive the full value of tax relief on their voluntary contributions that would have been available if they had been made at the relevant time (for example if the judge is now retired). Section 60(4) and (5), therefore provide that scheme regulations may reduce the amount of voluntary contributions payable by the amount of tax relief that would, but is not now, available.

Section 61: Interest and process

306 This section provides that scheme regulations may make provision for interest to be applied to relevant amount, including where a judge owes a sum to the scheme or "employer" and where the scheme owes sum to a judge.

307 Section 61(2) provides that regulations may make provision for: payments to be made via instalment plans; an application process to access certain payments; netting off arrangements; and conferring rights of appeal.

Section 62: Treasury directions

308 This section lists the regulation making powers in Chapter 2 which must be exercised in accordance with Treasury directions.

Section 63: Scheme rules that prohibit unauthorised payments

309 Under section 164 of the Finance Act 2004, registered pension schemes may only make payments to members of the types listed in that section. Where "unauthorised" payments are made, a tax charge applies. As it is possible that some of the payments that schemes are required to make to a member under Chapter 2 of this Act could be considered to be unauthorised and in breach of scheme rules, section 63(2) provides a power for the Treasury to set out in directions payments which would normally be unauthorised but, for the purposes of this Act, schemes are permitted to make.

310 Section 63(3) and (4) provide that a payment required in respect of a transfer from a PPA under section 41, which would otherwise be an unauthorised payment in breach of scheme rules, may also be made.

Section 64: Information statement

311 Section 64(1) requires that prior to a person making a scheme election, the relevant authority (as defined in section 72) must prepare an information statement and send it to the person.

312 According to section 64(3), the statement must contain a description of the benefits that would be available in respect of the judge's remediable service in both the 2015 and legacy schemes, as well as other relevant information, for example a description of remedial voluntary contribution arrangements that may be made by the judge in accordance with section 60.

Section 65: Power to delegate

313 This section enables the Lord Chancellor and Northern Ireland Department of Justice to delegate any of their respective functions under Chapter 2 of the Act.

Section 66: Section 61 of the Equality Act 2010 etc

314 This section removes the effect of the non-discrimination rule in section 61 of the Equality Act and paragraph 2 of Schedule 1 to EEAR(NI) 2006 when a pension scheme determines what pensionable service a member should have.

315 Section 66(2) provides that the non-discrimination rule ceases to have effect in relation to a person's remediable service at the end of the election period.

Section 67: Application of Chapter to immediate detriment cases

316 Section 67(1) clarifies that section 40 to 66 do not apply where an "immediate detriment remedy" has been obtained. Section 68 sets out where an immediate detriment remedy has been obtained, including where an election for legacy scheme membership in respect of a judge's remediable service has already been made and benefits or compensation have been paid out or steps such as changing pension scheme records have been taken. Where an immediate detriment remedy has been obtained, a subsequent election of scheme membership may not be made by or on behalf of the judge.

317 Section 67(2) and 67(3), however, permit scheme regulations to apply, with or without modification, any provisions of Chapter 2 to cases where an immediate detriment remedy has been obtained where it is required to return judges, or their beneficiaries, to the position they would have been in if there had not been a breach of the non-discrimination rule.

Section 68: Whether an "immediate detriment remedy" has been obtained

318 This section describes the conditions whereby an "immediate detriment remedy" has been obtained, including where their remediable service benefits or records have been adjusted by making an election or where a judge's entitlement has been determined by a court or tribunal.

Section 69: Meaning of "the election period"

319 This section provides that the election period should last three months, from a date to be determined by the relevant authority. Provision is also made for the relevant authority to extend the period for a particular person where he or she considers it is just and equitable to do so.

320 The section also makes provision for there to be different "the elections periods" for different descriptions of judge.

Section 70: Meaning of "a judicial scheme" etc

321 This section defines "a judicial scheme" and "a judicial legacy scheme" by reference to the relevant judicial pension scheme legislation.

Section 71: Meaning of "judicial office" etc

322 This section defines "judicial office" by reference to the relevant legislation.

Section 72: Meaning of "the relevant authority"

323 This section defines the relevant authority as the Lord Chancellor or Department of Justice in Northern Ireland.

Section 73: Meaning of "opted-out service" and "PPA opted-out service"

324 Section 73(1) defines "opted-out service" by reference to the definition in section 36(4)(b).

325 Section 73(2) defines "PPA opted out service".

Section 74: Scheme regulations

326 This section defines "scheme regulations" as being scheme regulations under section 1(4) of the PSPA 2013 (or PSPA(NI) 2014). Section 74(2) provides that these scheme regulations may amend the judicial legacy schemes and are to be exercised by the responsible authority for the judicial 2015 scheme. This provision therefore clarifies how the broad range of amendments to both the judicial legacy and 2015 schemes are to be made.

Section 75: Interpretation of Chapter

327 This section defines terms used in the Chapter.

Section 76: Modifications of Chapter in relation to fee-paid judicial offices

328 This section ensures that fee-paid judges (and ex-fee-paid judges) can meet the conditions for their service in a fee-paid office to be considered "remediable service".

Chapter 3: Local Government Schemes

Section 77: Meaning of "remediable service"

329 This section is the equivalent of section 1 for the Local Government Pension Scheme (LGPS). It defines what service is in scope of being remedied through the legislation. A member has "remediable service" if certain conditions are met. Broadly, the conditions are that:

a. the member has pensionable service under a local government new scheme between 31 March 2014 (31 March 2015 for the LGPS Scotland and Northern Ireland) and the earlier of their legacy scheme normal pension age and 31 March 2022; and

b. that on or before 31 March 2012 the member was in pensionable service under a local government legacy scheme or other relevant public service pension scheme, and there is no disqualifying gap (more than five years) falling within the relevant service period, disregarding any period of time when a person was a member of a broadly comparable private sector scheme after being outsourced from their public sector employment.

Section 78: Power to pay final salary benefits

330 This section allows local government new scheme regulations to be made to provide that member benefits in relation to remediable service (as defined in section 77) are final salary benefits. This is the core power that will allow LGPS regulations to be amended to remove the discriminatory provisions, by giving younger qualifying members equivalent protection to their older colleagues. In this context, a final salary benefit broadly means that a benefit has been calculated by reference to a member's pensionable earnings when a member's pensionable service ends, or when the member would have attained their Normal Pension Age applicable to the local government legacy scheme (usually 65). Section 78(3) allows

responsible authorities to make provision that a member may only have final salary benefits in respect of a period of service where they have aggregated or transferred previous pensionable service.

Section 79: Section 78: transitional provision

331 Section 79 provides for transitional provisions relating to section 78. In particular, this section ensures that local government transitional protection provisions made under PSPA 2013 or PSPA(NI) 2014, which could have been made under section 78, are treated as having been made under section 78. This ensures that transitional protection for all protected local government scheme members is treated as being provided for under this Act. Section 79(2) clarifies that this does not affect the continued operation of any scheme regulations made before section 78 comes into force.

Section 80: Pension credit members

332 Section 80 provides for scheme regulations to make provision regarding pension credit members. Pension sharing orders for divorces or dissolutions of civil partnerships generally award the member's ex-spouse a percentage of the value of the pension at the time of the divorce. The value is expressed as a Cash Equivalent Transfer Value (CETV). The ex-spouse/civil partner then becomes a member of the pension scheme in their own right and is known as the pension credit member, with a pension equivalent to the credit. As a result of the remedy, it is possible that the value of the pension at the time of the divorce/dissolution would have been different had the member always been a member of the alternative scheme for the remedy period. This means that even if the percentage quoted in the pension sharing order remains the same, the actual amount credited to the pension credit member may have been different.

333 This power therefore enables the responsible authority for a local government new scheme to amend provisions to award any additional credit due to the pension credit member as a result of the remedy. However, it does not give schemes the power to amend the pension sharing order itself.

334 To ensure that this power is applied consistently with other public service pension schemes, section 85 requires the power to be exercised in accordance with Treasury directions.

Section 81: Further powers to make provision about special cases

335 Section 81 provides for scheme regulations to make provision regarding two types of special case.

336 The first enables scheme regulations to make provision about cases where a person has excess teacher service, as defined in section 110(2). Excess teacher service is service that is in excess of the maximum that could be accrued under a teachers' Chapter 1 legacy scheme. Depending on the circumstances, that service may have been pensionable in a local government new scheme or in the teachers' new scheme. To ensure a consistent approach to this group, section 4(4) provides that any remediable service which is excess teacher service should be pensionable in a local government new scheme, where members may be entitled to underpin protection, if applicable. Due to the unique circumstances in which these members have become eligible for membership of the local government new scheme and the complexities that may arise from their transition to the local government scheme, this section ensures that responsible authorities are able to make specific provision in scheme regulations relating to these members.

337 The second enables scheme regulations to make provision about injury and compensation schemes, in particular by amending the relevant injury and compensation scheme. Certain workforces provide injury and compensation schemes, which pay benefits to those who are

injured whilst at work or carrying out their duties. These schemes are set out in Schedule 6 to the PSPA 2013 or Schedule 6 to PSPA(NI) 2014. The payments from injury and compensation schemes usually take into account any benefits payable from a connected pension scheme. The retrospective changes to a person's pension made by scheme regulations under Chapter 3 may mean that an award from a connected injury or compensation scheme was wrong in so far as it took into account pension benefits that will be changed by the Act. The award may have been overpaid in previous years and will need to be adjusted in future, once the pension is revised. This section ensures that responsible authorities are able to make provision in scheme regulations for the connected scheme to take account of any change to pension benefits payable to a member, attributable to the application of Chapter 3.

Section 82: Power to pay compensation

338 Section 82 enables scheme regulations to make provision allowing scheme managers to pay compensation in respect of compensatable losses incurred by local government scheme members. Most compensatable losses would be for the schemes to pay –for example, where the loss is attributable to the value of pension rights payable from the scheme. Other losses would normally fall to the employer to pay – for example, losses attributable to a breach of the non-discrimination rule. The power at section 82(2) allows scheme regulations to make provision for a scheme employer to reimburse the scheme where it is considered that the employer rather than the pension scheme should meet the cost.

Section 83: Indirect compensation

339 There may be instances where, for example, a member has paid a tax charge using "scheme pays" which results in the amount of benefits they would have received being reduced at retirement. In such circumstances, section 83 provides a power for local government new scheme regulations to make provision so that scheme managers can give members entitlements to additional benefits instead of cash compensation. These additional benefits would be paid when the member retires.

Section 84: Interest and process

340 Where sums are owed to members, for example relating to past pension benefits, section 84 allows regulations to be made which will set out the process for such sums to be paid. As the remedy period could span eight years, interest would be added to amounts payable by schemes.

341 This power allows interest to be calculated and paid. Regulations under this section have to be exercised in accordance with Treasury directions and, in the case of regulations that relate to the calculation and payment of interest, following consultation with the Government Actuary (under section 85(1), (2)(f) and (4)).

Section 85: Treasury directions

342 Section 85 provides that the powers in relation to the matters covered in sections 80 to 84 must be exercised in accordance with Treasury directions. This ensures that, where Treasury ministers (or in relation to Northern Ireland, the Department of Finance), who are responsible for policy on public service pensions, consider that a consistent approach is necessary or desirable, the Treasury (or in relation to Northern Ireland the Department of Finance), may give directions to schemes.

343 Section 85(2)(a) is concerned with pension credit members. Section 85(2)(b) is concerned with special cases. Sections 85(2)(c), (d) and (e) are concerned with matters relating to payments made to members through direct or indirect compensation. Section 85(2)(f) relates to the power to make scheme regulations concerning interest to be calculated and paid on amounts owed to members.

344 The provisions in this section are consistent with the approach provided for in section 27 in respect of Chapter 1 schemes and ensure that the Treasury and the Department of Finance can provide for consistent approaches between schemes on similar issues.

Section 86: Meaning of "local government scheme" etc

345 This section contains relevant definitions for the terms used in this Chapter:

- a "local government scheme" is defined as either a local government "new" scheme or a local government "legacy" scheme;
- a "local government new scheme" means a scheme for local government workers established under section 1 of PSPA 2013 or PSPA (NI) 2014 – broadly, a career average scheme; and
- a "local government legacy scheme" means an existing scheme for local government workers mentioned in Schedule 5 of PSPA 2013 or PSPA (NI) 2014 – broadly, a final salary scheme.

Section 87: Interpretation of Chapter

346 Section 87 provides definitions for terms found in this Chapter.

Chapter 4: General

Section 88: Restriction of existing schemes

347 This section amends sections 18 and 31 of the PSPA 2013, and sections 18 and 32 of the Public Service Pensions Act (Northern Ireland) 2014 (PSPA(NI) 2014); it also makes consequential amendments to the Judicial Pensions and Retirement Act 1993 (JUPRA).

348 This section closes the legacy schemes to further accrual from 1 April 2022. All members of public service pension schemes from that date accrue pension benefits in a new scheme, subject to the narrow exceptions set out in section 89.

349 Section 88(2)(c) is the core operative provision and repeals sections 18(5) to 18(8) of the PSPA 2013. This section prospectively, with effect from 1 April 2022, removes the power for scheme regulations to make exceptions to section 18(1) of the PSPA 2013, which closed the legacy schemes to further accrual from 1 April 2015. As a consequence, and subject to the transitional and savings provisions in section 89, the power to provide tapered and transitional protection will no longer be available from 1 April 2022, and any exceptions that were made under these powers will no longer have effect from 1 April 2022 (this is the effect of the law when powers are repealed prospectively, and this effect is also clarified by the wording of section 89(1)).

350 Section 88(2)(b) inserts a new subsection (4A) into section 18 PSPA 2013, which clarifies that the closure of the legacy schemes by section 18(1) of the PSPA 2013 does not apply and is retrospectively treated as never having applied in relation to a member's remediable service in a legacy scheme. This section therefore inserts an exception to the closing date in section 18(1) PSPA 2013, with retrospective effect, for all those who have remediable service which is treated as pensionable service under the legacy schemes by virtue of the provisions of this Act. This ensures that the provisions of section 18 PSPA 2013 do not conflict with the provisions of this Act (particularly section 2(1)) which retrospectively treat members' remediable service as pensionable service under the legacy schemes.

351 Section 88(3) amends section 31(4) of the PSPA 2013 to reflect the repeal of sections 18(6) and 18(7) of that Act.

352 Section 88(4) to 88(6) replicate the provisions in section 88(1) to 88(3) in respect of the PSPA(NI) 2014.

353 Consequential amendment is made to JUPRA by section 88(7).

Section 89: Restriction of existing schemes: savings and transitional provision

354 This section makes transitional and savings provisions in respect of section 88, whereby scheme regulations may continue to exercise the powers contained in (repealed) sections 18(5) to 18(8) of PSPA 2013 or (repealed) sections 18(5) to 18(9) of PSPA(NI) 2014 to provide exceptions to the closure of legacy schemes from 1 April 2022 only in the narrow circumstances specified by section 89(2).

355 The circumstances specified by section 89(2) are:

a. in connection with transitional protection, only to the extent that it existed in scheme regulations prior to 1 April 2022 and in respect of a member's service between 1 April 2015 and 31 March 2022;

b. in connection with transfers into a public service pension scheme by a Fair Deal employee17, or by other employees accruing benefits in an unreformed public sector pension scheme. In such a case, if those employees have accrued any pensionable service on or after 1 April 2022 in a scheme broadly equivalent to a legacy scheme, they may be awarded credit in a legacy scheme; and

c. in connection with weighted accrual. To the extent that a member's accrual rate in a legacy scheme is dependent on their length of service (regardless of the scheme in which that service is pensionable), that accrual rate should continue to be adjusted on the same basis; in such a case, further accrual will be permitted in a legacy scheme only to the extent that it derives from an increase in the relevant member's length of service.

356 Section 89(4) to (6) replicate the provisions in section 89(1) to 89(3) in respect of the PSPA(NI) 2014.

Section 90: Restriction of other schemes

357 Section 90 closes the judicial schemes that are not listed as "existing schemes" under Schedule 5 to the PSPA 2013 and the pension scheme established for certain employees of the Secret Intelligence Service.

358 Section 90(1) prevents members of a "relevant scheme" from accruing benefits in relation to their service after 31 March 2022. Section 90(2) outlines the definition of "relevant scheme". These are the pension schemes established for certain employees of the Secret Intelligence Service, the NJPS, the Northern Ireland Judicial Pension Scheme 2015, and the FPJPS 2017.

[17] The Fair Deal, first introduced in 1999, is a non-statutory policy setting out how pensions issues are to be dealt with when staff are compulsorily transferred from the public service employments to independent providers delivering public services. In 2012, the Government announced the Fair Deal would be reformed. Staff who are compulsorily transferred from the public service are now offered continued access to a public service pension scheme (the "New Fair Deal") rather than being offered a broadly comparable occupational pension scheme (the old "Fair Deal").

359 Section 90(3) expands on the definition of benefits in relation to a person's service under section 90(1) to include benefits relating to the person's death in service.

Section 91: Prohibition of new arrangements to pay voluntary contributions

360 This section provides that no arrangements to pay voluntary contributions to a relevant scheme (as defined in subsection (2)) may be entered into after 31 March 2022.

361 Section 91(3) provides that section 91(1) does not affect arrangements that were entered into on or before 31 March 2022 and does not apply to new arrangements entered into by virtue of scheme regulations made under section 25 or 60 of this Act.

Section 92: Amendments relating to employer cost cap

362 PSPA 2013 and PSPA NI 2014 provide for the operation of the cost control mechanism (CCM). The CCM assesses certain elements of scheme costs and compares these costs to a base level (the "employer cost cap"), set at the first valuation. If the costs measured in the CCM have decreased/increased by more than the specified margins below/above the employer cost cap, then member benefits are increased/reduced to bring costs back to target (or member contributions are reduced/increased). The upper and lower margins have been specified in Treasury Regulations as a percentage of pensionable pay. So, there is effectively a corridor either side of the employer cost cap, with margins representing the 'ceiling' and 'floor'.

363 By amending section 12 of PSPA 2013, section 92 sets the legislative framework for the implementation of two of the Government's three reforms to the CCM, namely the reformed scheme only design and the economic check. Section 92 confers powers on HM Treasury (or Northern Ireland's Department of Finance) to implement the two reforms through Directions. It also makes some minor technical changes to PSPA 2013.

364 Subsection (2) provides for the employer cost cap to be set within a year of the date on which a scheme's first valuation (i.e., the valuation that includes a calculation of the employer cost cap) is completed. In effect, this allows the employer cost cap to be set after the regulations of a new scheme are made.

365 Subsection (3) clarifies that "employer cost cap" in section 12 of PSPA 2013 refers to the rate set by virtue of s.12(1) PSPA 2013.

366 Subsection (4) clarifies that employer cost caps are set for schemes made under section 1 of PSPA 2013 and that how changes in costs are to be measured is to be in accordance with Treasury Directions.

367 Subsection (5)(a) and (b) make further minor clarifications by substituting "the cap" with "the employer cost cap of the scheme" and "subsequent valuations" with "the second or any subsequent valuation".

368 Subsections (5)(c) and (7) relate to the reformed scheme only design. Subsection 5(c) makes a minor amendment to s.12(4)(c) PSPA 2013, clarifying that Treasury Directions may determine whether and to what extent costs or changes in the costs of connected schemes are to be considered by the CCM. This makes it explicit that Treasury Directions may provide for the costs or changes in costs of connected schemes to be excluded from the CCM. Subsection (7) amends s.12(5)(a) PSPA 2013 to clarify that whether and how to take into account the costs of connected schemes is determined by Treasury Directions made under s.12(4) PSPA 2013, which is amended by subsection (5)(c) as per the above.

369 Subsection (5)(d) sets the framework for the introduction of the economic check. It inserts a new subsection into s.12(4) PSPA 2013, stating that the data, methodologies, and assumptions used for the purposes of specifying (in Treasury Directions) the costs, or changes in costs, that

are to be taken into account by the CCM are to relate to the growth in the economy, growth in earnings or the rate of inflation. This creates a new power for the Treasury to implement the economic check in Directions.

370 Subsection (6) inserts a new subsection to clarify that statements made prior to the date the Government Actuary's (GA) report was delivered to the Government (27 May 2021) should no longer apply to the operation of the CCM, in order to reflect clearly in law and for the avoidance of doubt the change in policy position that the implementation of the economic check represents. This ensures subsection (5)(d) creates a power that can introduce an economic check designed in line with the GA's recommendation and the Government's policy intention as expressed in the Government's consultation response and public statements made since.

371 Subsection (8) clarifies that in s.12(6) PSPA 2013 "the scheme" refers to a scheme under section 1 of PSPA 2013. It also clarifies that "the margins" refers to either of the margins specified under s.12(5)(a) PSPA 2013 – that is, either the upper or lower margin.

372 Subsection (9) makes a number of clarifications regarding the process that follows a breach of the CCM by inserting four new subsections into s.12 PSPA 2013. First, it provides for Treasury Directions to specify the time at which an increase or decrease in members' benefits or contributions should take effect. Second, it requires that steps to rectify a breach are only taken after the scheme actuary has certified those steps would achieve the target cost of the scheme. Third, it provides that Treasury Directions may specify which costs or changes in costs are to be taken into account, or which data, methodologies and assumptions are to be used, for the purposes of determining whether any steps, if taken, would achieve the target cost of the scheme. Finally, it clarifies that "the scheme actuary" means the actuary who carried out, or is, for the time being, exercising actuarial functions in relation to, the valuation under s.11 of PSPA 2013 that suggests a breach has occurred.

373 Equivalent changes are made to PSPA NI 2014, save for the fact that the relevant powers are conferred on Northern Ireland's Department of Finance, not HM Treasury. Subsection (19) also provides for the removal of "and Personnel" in subsections (3), (4), (5), (8), (9) and (10) of section 12 PSPA NI 2014.

Section 93: Operation of employer cost cap in relation to 2016/17 valuation

374 Where a breach of the CCM has occurred, rectification must take place. This involves adjusting member benefits or contributions prospectively. Rectifications are determined through a process involving Scheme Advisory Boards established under s.7(1) of PSPA 2013 or s.7(1) of the PSPA NI 2014. There is a default rectification method in case agreement cannot be reached through that process. If the assessed cost is above the upper margin, known as a ceiling breach, then action is taken to reduce the value of benefits that will be accrued in the new scheme, and/or member contributions will be increased. Alternatively, if the assessed cost is below the lower margin, known as a floor breach, then the value of benefits that will be accrued in the new scheme will be increased, and/or member contributions will be decreased.

375 Section 93 provides that ceiling breaches above the upper margin of the employer cost cap are not rectified at the 2016 valuations (or 2017 valuations for the Local Government Pension Scheme (Scotland)) to ensure that no benefit reductions take place as a result of the conclusion of the 2016 (and 2017) valuation process. Section 93 does not, however, prevent the rectification of any floor breaches that occur at the 2016 valuations (or 2017 valuations for the Local Government Pension Scheme (Scotland)) so any benefit improvements or cuts to member contributions that are due will be honoured.

376 Subsections (1) and (2) remove the requirement to rectify a ceiling breach at the 2016/17 valuations of a public service pension scheme, including retrospectively, by removing the effect of Treasury regulations[18] made under s.12(5) of PSPA 2013. Accordingly, where the cost of a scheme goes above the ceiling, this section also removes the effect of Treasury regulations that specify a target cost.

377 Subsection (3) clarifies that, in this section, "section 1 scheme" means a scheme under section 1 of PSPA 2013, "the employer cost cap", in relation to a section 1 scheme, has the same meaning as in section 12 of PSPA 2013, and any reference to a section 1 scheme's "2016/17 valuation" is to the scheme's valuation under section 11 of PSPA 2013 with an effective date in 2016 or 2017.

378 Equivalent changes are made to PSPA NI 2014, save for the fact the relevant powers are conferred on Northern Ireland's Department of Finance, not HM Treasury.

379 Subsection (7) provides that the actuarial valuation with an effective date of 31 March 2016 that was signed on 18 December 2018 under regulation 123 of the Local Government Pension Scheme Regulations (Northern Ireland) 2014 (S.R. (N.I.) 2014 No. 188) is of no effect. Unlike the other public service pension schemes, the Northern Ireland Local Government Pension Scheme signed this valuation report before the Court of Appeal judgment was made and the cost control valuations were paused. In line with the Government decisions taken following that judgment and for consistency with other public service pension schemes, the Northern Ireland Local Government Pension Scheme is now preparing a valuation report that will supersede the report signed on 18 December 2018. Section 93(7) clarifies that the report signed on 18 December 2018 is therefore of no effect.

Section 94: Amendments relating to scheme regulations

380 This section provides for amendments to the PSPA 2013 and the PSPA(NI) 2014. Section 94(1) to 94(4) amend section 3 of the PSPA 2013 to allow scheme regulations to make consequential, supplementary, incidental or transitional provision amending any primary legislation passed before or in the same session as this Act or secondary legislation. In conjunction with section 37 and 74, this allows responsible authorities for new schemes to use scheme regulations to amend both legacy schemes and new schemes, in order to make consequential, supplementary, incidental or transitional provision in relation to any provision of Part 1 of this Act. Section 94(11) to 94(14) make the same provision in respect of the PSPA(NI) 2014.

381 Section 94(5) and 94(6) remove an exception to the requirement in section 3(5) (and contained in section 3(6)(b)) of the PSPA 2013) for Treasury consent in the making of scheme regulations by a responsible authority. The relevant exception is set out in section 3(6)(b) PSPA 2013 and relates to scheme regulations of the Welsh Ministers for fire and rescue workers. This reflects the introduction of an Exchequer grant for these pensions where employer and employee contributions are insufficient to meet the current costs of paying pensions. As a consequence, Treasury consent will now be required before the Welsh Ministers make scheme regulations relating to fire and rescue workers. The section also introduces a delegated power for the Treasury to make future amendments to the exceptions set out in section 3(6) PSPA 2013 through a Treasury order.

[18] The Public Service Pensions (Employer Cost Cap) Regulations 2014 (S.I. 2014/575).

382 Section 94(7) amends section 8 of the PSPA 2013 to clarify that local government new schemes remain career average revalued earnings schemes, notwithstanding the changes made through this Act to remedy the discrimination. Section 94(15) makes the same provision in respect of the PSPA(NI) 2014.

383 Section 94(8) amends the PSPA 2013, section 21, to provide that the consultation requirements in relation to scheme regulations imposed by that section may be satisfied by consultation before, as well as after, the coming into force of the powers in this Act, and the consequential amendment power inserted by this Act into section 3(2)(c) of the PSPA 2013. The policy intention is that this will allow schemes to consult upon their scheme regulations when they are ready to do so. Section 94(16) makes the same provision in respect of the PSPA(NI) 2014.

384 Section 94(9) amends the PSPA 2013, section 23, which sets out the procedure in relation to retrospective provision in scheme regulations. Under section 23 PSPA 2013, where a responsible authority proposes to make scheme regulations containing retrospective provision, the responsible authority must first consult the persons likely to be affected (or their representatives) with a view to reaching agreement with them (or obtain their consent where the provision appears to have significant adverse effects) and is required to lay a report before Parliament, Senedd Cymru, the Scottish Parliament or the Northern Ireland Assembly. Section 84(9) inserts an exception to section 23 PSPA 2013 where retrospective provision is made under any provision contained in Part 1 of this Act, or any consequential, supplementary, incidental or transitional provision under section 3(2)(c) PSPA 2013 (which is inserted by section 84(3)). Section 84(10) provides a definition for the abbreviation of this Act to be inserted into section 37 PSPA 2013. Section 94(17) and 94(18) make equivalent provision in respect of the PSPA(NI) 2014.

Section 95: Amendments relating to the establishment or restriction of schemes

385 PSPA 2013 and PSPA (NI) 2014 set out the governance and valuation frameworks for pension schemes set up under these Acts. This section ensures that the governance and valuation frameworks operate as intended where a pension scheme established under PSPA 2013 or PSPA (NI) 2014 is closed, and a new scheme is established for persons of the same description. Where two schemes have been established for persons of the same description, they are known as “connected schemes” (see section 4(6) PSPA 2013 and PSPA (NI) 2014).

386 Section 95(2), (3) and (4) insert new subsections into sections 4, 5, and 7 of PSPA 2013 to ensure that scheme regulations do not need to provide for the appointment of a scheme manager, pension board and scheme advisory board respectively, if the scheme in question is connected with another scheme and a scheme manager, pension board or scheme advisory board is provided for in regulations for that connected scheme. Section 95(4) also amends section 7 PSPA 2013 to require scheme advisory boards to provide advice on the desirability of changes to connected schemes, as long as those schemes are not injury or compensation schemes. Sections 95(9), 95(10) and 95(11) make the equivalent changes to PSPA (NI) 2014.

387 Section 95(5) inserts a new subsection which removes the requirement under s.11(1) PSPA 2013 for a scheme’s regulations to provide for actuarial valuations of that scheme where the scheme is connected with another scheme and actuarial valuations are provided for in the regulations of that other scheme. Section 95(12) makes the equivalent changes to PSPA (NI) 2014.

388 Section 95(6) inserts a new subsection (12A) which states that where a scheme is a restricted scheme and is specified for the purposes of this section in Treasury regulations, the requirement under section 11(1) PSPA 2013 is removed and section 12(1) PSPA 13 is disapplied in respect of that scheme, meaning scheme regulations need not provide for actuarial valuations or the setting of an employer cost cap for the purpose of measuring

changes in the cost of that scheme. Treasury regulations which specify a scheme for the purpose of this section are subject to the negative Commons procedure. Section 95(13) makes the equivalent changes to PSPA (NI) 2014, save for the fact that schemes to which this section applies are to be specified in regulations made by Northern Ireland's Department of Finance. Those regulations will be subject to negative resolution.

Section 96: Amendments relating to the Secret Intelligence Service etc

389 This section amends the PSPA 2013 to accommodate provisions related to Secret Intelligence Service pensions. Section 96(2)(a) clarifies the closing date for legacy schemes as being 31 March 2016 and section 96(2)(b) defines "relevant Agency scheme".

390 Section 96(3) to 96(5) state the words or paragraphs to be omitted with regard to these schemes. Section 96(6) states that any provision of subordinate legislation related to Agency schemes under sections 18 or 31 of the PSPA 2013 that came into force before this section and could have been made under section 18 of the PSPA 2013 if the amendments under section 96(1) to 96(4) had been in force at that time, are to be treated as having been made under section 18 of the PSPA 2013.

Section 97: Amendments relating to the judiciary

391 Section 97(1) and 97(2) insert a new section 25A into the PSPA 2013 which enables scheme regulations made under the PSPA 2013 for the judiciary to take into account relevant past service of a holder of a judicial office subsequently added to the scheme through an order made under paragraph 2(1) of Schedule 1 to the PSPA 2013. This means that the relevant pensionable service of such a judicial office holder can be backdated so that it may start before the date of inclusion of the judicial office in the order under Schedule 1. For example, if a judicial office is added to the definition of the judiciary (e.g. if there is a new judicial office) in 2024, but it is deemed that a holder of that office should be able to accrue pensionable benefits in the scheme for service from 2023, then scheme regulations made under section 25A of the PSPA 2013 may make provision so that pension benefits of that office holder are to be determined by reference to judicial service from 2023. The scheme regulations will also enable the collection of member contributions in relation to accrual of pension benefits for that service prior to being specified in the relevant order.

392 Section 97(3) replaces the prohibition on including Northern Irish or Scottish devolved offices within the scope of the definition of the judiciary in the PSPA 2013 so that the Lord Chancellor or the Secretary of State for Scotland (depending on who is the appropriate minister for the purposes of paragraph 2(1) of Schedule 1 to the PSPA 2013) may specify such a devolved judicial office in the definition of the judiciary in that Act in response to a request from the Scottish Ministers or the Department of Justice.

393 Section 97(4) and 97(5) make equivalent provision for the PSPA (NI) 2014 to that in section 97(1) and 97(2).

Section 98: Amendments relating to non-scheme benefits

394 Section 98(1) to 98(3) amend section 26 of the PSPA 2013 which allows the scheme manager or employer of a section 1 PSPA 2013 scheme to pay in respect of a person, pensions or other benefits into a scheme other than a section 1 scheme. The amendments clarify that such benefits can only be paid to persons who are members of a section 1 scheme, by virtue of section 1(2) or section 25 PSPA 2013, in addition to persons who would be such members but for the fact they are members of a stakeholder or personal pension scheme or occupational defined contributions scheme.

395 Section 98(4) to 98(6) make equivalent provision for the PSPA (NI) 2014 to that in section 98(1) to 98(3).

Section 99: Amendments relating to pension schemes for members of the Senedd

396 Section 99 amends section 30 of the PSPA 2013 to disapply subsection (1)(e) (cost control) and (3) for new public body pension schemes for members of the Senedd. Section 30(1)(e) required a scheme for Senedd members to provide for actuarial valuations to be made of the scheme (and any statutory scheme that is connected with it) and for an employer cost cap (to be used for the purposes of measuring changes in the cost of the scheme). Section 30(3) required Treasury consent to be obtained before a new public body pension scheme for Senedd members was made or amended. The Wales Act 2017 inserted Schedule 7A to the Wales Act 2006 to provide the Welsh Government with legislative competence for pensions in relation to members of the Senedd. The changes to the PSPA 2013 ensure, in accordance with the provisions of the Wales Act 2006, that there is no interference with the devolved responsibility of the Welsh Government for Senedd pensions.

Section 100: Guidance to public service pension scheme managers on investment decisions

397 Section 100(1) to 100(2) amends the power in paragraph 12(a) of Schedule 3 to the PSPA 2013. The provision allows the responsible authority of a public service pension scheme to make regulations allowing for the issuing of guidance or directions to the scheme manager regarding the administration and management of the scheme, to cover investment decisions which it is not proper for the scheme manager to take in light of the UK's foreign and defence policy. The power applies to the responsible authorities of the LGPS which for the LGPS in England and Wales is the Secretary of State and for the LGPS in Scotland is the Scottish Ministers.

Section 101: Power of Treasury to make scheme for compensation

398 This section provides that the Treasury may make regulations to create a compensation scheme to pay compensation in relation to any compensatable losses incurred by relevant members.

399 Section 101(2) provides that the Treasury may make provision including:

a. appointing a body to administer the scheme;

b. establishing a body to administer the scheme including the appointment of members, staffing, expenditure, procedures and other matters the Treasury consider appropriate;

c. allowing the body to exercise a discretion;

d. conferring power on the Treasury to give guidance or directions to the body administering the scheme; and

e. any provision that could be included in regulations made by virtue of section 26 (interest and process) in relation to compensation payable under section 23 (power to pay compensation) or 61 (interest and process) in relation to compensation payable under section 59 (power to pay compensation).

Section 102: Power of Department of Finance to make scheme for compensation

400 This section confers equivalent powers to the Department of Finance in Northern Ireland to create an equivalent scheme to the one detailed in section 101.

Section 103: Power to make provision in relation to certain fee-paid judges

401 Section 103(1) provides a power to make provision for the purpose of ensuring certain judges whom it is accepted have fee-paid service in a relevant legacy scheme from April 2015 are put in the position, so far as possible, that they would have been in had they always been treated as members of that legacy scheme. This specific group of judges (defined in section 103(3)) were aged over 55 on 1 April 2012, in fee-paid service on 31 March 2012 and took up salaried office between 1 April 2012 and 1 December 2012 or, in the case of members of a Northern Ireland scheme, on 31 January 2013.

402 The mechanism to deal with rectifying individual circumstances, for example, pension benefits paid, contributions liability and member options that may have been purchased in the 2015 scheme are complex. Section 103(1) therefore provides that regulations may be made in respect of these judges. Section 103(2) sets out provision that may be made under the power in section 103(1) which includes regulations that correspond with some of the powers in Chapter 2 in respect of judges with remediable service.

Section 104: HMRC information-sharing and other functions relating to compensation etc

403 This section provides a new function enabling HMRC (or anyone acting on their behalf) to exchange information with a relevant person for the purpose of facilitating the exercise of any "compensation function" (as defined in section 104(6)) or to do anything else which HMRC think necessary or expedient for that purpose. This is to facilitate the sharing of any information required to process any claims for compensation under this Act.

404 Section 104(2) sets out the conditions for data use by the person who receives the data and the consequences if that data discloses personal information.

405 Section 104(3) extends the criminal offence found in section 19 of the Commissioners for Revenue and Customs Act 2005 (offence of wrongful disclosure) to contraventions of section 104(2)(b) in relation to identifiable personal information. Section 104(4) and (5) clarify the relationship between this section and other legislation relating to disclosure of information. Section 104(6) contains definitions of terms used in this section.

Section 105: Section 91 of the Pensions Act 1995 and section 356 of Armed Forces Act 2006

406 Section 105(1) and (2) disapplies section 91 of the Pensions Act 1995 and Article 89 of the Pensions (Northern Ireland) Order 1995. These provisions state that occupational pension entitlements to a pension or right to a future pension cannot be assigned or commuted or surrendered, and that there can also be no set-off exercised against it. Section 105(2)(a) provides that these prohibitions do not apply to any provision in this Act. Section 105(2)(b) provides that the surrender of a pension entitlement or right as a condition for inclusion of opted-out service in remedy under section 5(5)(b), or the surrender of a pension entitlement or right to a partnership pension account under section 41(3) or (6), is permitted.

407 Section 105(3) and 105(4) provides that restrictions in section 356 of the Armed Forces Act 2006, which prevent certain armed forces pension benefits from being assigned, do not apply to the operation of Part 1 of the Act.

Section 106: Minor amendment

408 Section 106 makes a minor correction to section 2(7A) of JUPRA on a cross-reference within that section on ill-health retirement benefits.

Section 107: Parliamentary procedure for judicial schemes: transitory provision

409 Section 107 provides that scheme regulations for the judiciary made within one month of the passing of this Act are subject to the made-affirmative procedure. Section 107(3) states that such regulations will cease to have effect 28 days after being made unless they are approved by each House of Parliament. The 28-day period does not include days in which Parliament is dissolved or prorogued or where either House is adjourned for more than four days (section 107(4)). Scheme regulations for the judiciary are generally subject to the draft affirmative procedure as provided for in section 24 of the PSPA 2013. This change in procedure for a short period after the passing of this Act is to ensure that there is no gap in pension provision for the judiciary when all current pension schemes for the judiciary close to future accrual after 31 March 2022.

410 Section 107(6) provides that regulations otherwise subject to the negative procedure may be combined with scheme regulations made under this section, with the combined instrument being subject to the made-affirmative procedure. This enables a single instrument to establish the reformed judicial pension scheme and to add devolved office holders to the definition of judiciary.

Section 108: Power to make consequential provision

411 This section permits amendments, repeals or revocations of primary and secondary legislation that are consequential upon the provisions contained in Part 1 of this Act. Regulations made under this section can make retrospective provision. Where regulations made under this section affect primary legislation (as defined in section 108(6), to include devolved legislation), those regulations will be subject to the affirmative procedure. Any amendments to, repeals or revocations of secondary legislation are subject to the negative procedure.

Section 109: Meaning of "member" etc

412 This section defines a member as being someone who is a member of any pension scheme, whether alive or deceased. An active member refers to a member who is presently accruing benefits as part of an employment or office held. A pensioner member refers to a member who is entitled to present payment of benefits from a pension scheme. A deferred member has accrued rights under the pension scheme but is neither an active member nor a pensioner member.

Section 110: Interpretation of Part

413 This section provides definitions for words and phrases found in this Act.

Part 2: Pensions and Banking (Special Provisions) Act 2008 Bodies

Section 111: Establishment of new public schemes and transfer of rights

414 Section 111(1) allows the Treasury to make regulations to establish one or more new pension schemes to provide for pension payments and other benefits to and in respect of persons who are, or have been, members of the BBS Pension Scheme or the NRAM Pension Scheme.

415 Section 111(2) allows the Treasury to make regulations to transfer qualifying accrued rights from the BBS Pension Scheme and the NRAM Pension Scheme to a new public scheme, without requiring any approval or consent.

416 Section 111(3) allows regulations under section 111(2) to include provision for the discharge of any liabilities that are transferred under section 111(2). This may be used to discharge the liabilities of the trustees of the BBS Pension Scheme and the NRAM Pension Scheme.

417 Section 111(4) and 111(5) define the qualifying accrued rights that may be transferred to a new public scheme. These include rights or entitlements to and in respect of members of BBS or NRAM pension scheme, and their survivors, to present or future benefits under the relevant scheme. This includes rights and entitlements to money purchase benefits, also known as defined contribution pensions, and pension credit rights, which are rights provided to an ex-spouse or ex-civil partner under a pension sharing order.

418 Section 111(4) provides that qualifying accrued rights are rights that exist immediately before "the qualifying time" specified in regulations by the Treasury.

419 Section 111(6) provides that regulations specifying or describing "the qualifying time" may make provision for transfers of qualifying accrued rights generally, or for other transfers. This means that these regulations may specify "the qualifying time" in relation to these types of transfers.

Section 112: New public schemes: further provision

420 Section 112(1) allows a new public scheme to provide for:

a. the payment of pensions or benefits to or in respect of some or all persons who are, or have been, members of the BBS Pension Scheme or the NRAM Pension Scheme;

b. the payment of money purchase benefits and/or benefits which are not money purchase benefits;

c. increasing the amounts payable in respect of qualifying accrued rights by the new scheme; and

d. the payment or receipt of transfer values or other lump sum payments.

421 A new public scheme established under section 99 would not come within the definition of an occupational pension scheme in section 1(1) of the Pension Schemes Act 1993. Section 112(2) allows for regulations to provide for a new scheme to be treated as an occupational pension scheme. Section 112(2) also enables regulations to provide that a new public scheme to be treated as a previously contracted-out scheme. This will allow a new public scheme to make provision for qualifying accrued rights that were contracted out under the BBS Pension Scheme or the NRAM Pension Scheme. Finally, section 112(2) enables a new scheme to be treated as another type of occupational pension scheme, such as a public service pension scheme under section 1(1) of the Pension Schemes Act 1993. It also provides for such an enactment to apply to a new public scheme with modifications specified in the regulations.

422 Section 112(3) provides that regulations that amend a new public scheme may have retrospective effect. This would be subject to the affirmative procedure under section 107. Such powers are common in public service pensions legislation. For example, it may be necessary to adjust schemes to accommodate changes in law or where the Government does not want to delay the benefit of a particular change but needs time to consider the consequences and appropriate method of making the change.

423 Section 112(4) permits regulations under section 112(1) to confer functions on the Treasury or another person, and for that person to exercise discretion.

424 Section 112(5) allows the Treasury to make arrangements for a new public scheme to be administered by any person, and to delegate to any person a function exercisable by the Treasury (such as the administration of the scheme) under the new public scheme.

Section 113: Protection against adverse treatment: transfer of rights

425 This section provides protection against the accrued rights of members of the BBS or NRAM Pension Scheme being adversely affected by the transfer of their rights to a new public scheme.

426 Section 113(1) imposes an obligation on the Treasury, when making regulations under section 99 which transfer qualifying accrued rights to a new public scheme, to ensure that the general scheme requirement under section 113(2) is met. It also imposes an obligation on the Treasury where qualifying accrued rights are money purchase benefits which are not in payment, to ensure that the money purchase requirement under section 113(3) is met.

427 Section 113(2) defines the general scheme requirement: the provision in the new public scheme in respect of qualifying accrued rights must be, in all material respects, at least as good immediately after the regulations are made, as under the BBS or NRAM Pension Scheme (as appropriate) immediately before that time.

428 Section 113(3) defines the money purchase requirement: the value of a person's money purchase benefits (other than pensions in payment) under a new public scheme, immediately after the transfer, must be at least equivalent to the value of their qualifying accrued rights under the BBS Pension Scheme or NRAM Pension Scheme (as appropriate). Pensions in payment are not included in this section. This is because they will not be money purchase benefits in a new public scheme, under the statutory definition of section 181 of the Pension Schemes Act 1993. Qualifying accrued rights to pensions in payment will however be protected under the general requirement.

429 Section 113(4) provides that the Treasury may make regulations about the determination of the value of money purchase benefits for the purposes of section 113(3).

430 Section 113(5) permits regulations under section 113(4) to make provision about the person by whom and manner by which the value of rights or entitlements are valued. It also enables these regulations to make other provisions.

431 Section 113(6) makes clear that section 113(4) may not provide for the value of qualifying accrued rights to be determined by reference to a date more than three months before the transfer.

432 Section 113(7) provides that section 113(1) does not require the Treasury to include any provision in a new scheme if the Treasury is of the opinion that such provision would be incompatible with an enactment.

433 Section 113(8) makes clear that section 113(1) to 113(3) should not be read as: requiring a new scheme to take a particular form; to be established in a particular way; requiring any duty or power imposed by a new scheme to be performed in a particular way; or affecting the power of any person to amend a new scheme.

Section 114: Protection against adverse treatment: amendment of new public schemes

434 Section 114(1) provides that the Treasury may not exercise its power to make regulations to amend a new public scheme, if those amendments would or may adversely affect individuals' subsisting rights, unless the requirement for the consent of interested persons or their representatives under section 114(2), or the procedure requirements in section 102(4), have been met. In all other cases, the requirements for the consultation of interested persons or their representatives in section 114(3) must be met.

435 Section 114(2) provides that the consent requirements will be specified or described in regulations made by the Treasury.

436 Section 114(3) provides that the consultation requirements will be specified or described in regulations made by the Treasury.

437 Section 114(4) provides that procedure requirements will also be specified or described in regulations made by the Treasury. It also specifies that these are not requirements for the consent or consultation of interested persons or their representatives.

438 Section 114(5) to 114(7) provide definitions for terms used in this section.

Section 115: Transfer of assets and liabilities

439 Section 115(1) enables the Treasury, through regulations, to provide for the assets and liabilities of the BBS or NRAM pension schemes to be transferred to a nominee of the Treasury, or a company established by the Treasury for the purpose of holding the assets and liabilities pending their disposal or discharge.

440 Section 115(2) provides that regulations may only be made under this section where regulations have been made under section 99.

441 Section 115(3) provides that regulations made under this section may include provision for payments to be made into the Consolidated Fund.

Section 116: Transfer of other pensions and benefits

442 Section 116(1) enables the Treasury, through regulations, to provide for the transfer to the Treasury of qualifying liabilities of Bradford & Bingley, NRAM Limited, or UK Asset Resolution Limited.

443 Section 116(2) provides the definition of "qualifying liability" in this section: a qualifying liability is defined as a liability to pay a person a pension or other benefit in connection with that person's past service with Bradford & Bingley, Northern Rock plc or another entity, excluding liabilities arising under the BBS Pension Scheme or NRAM Pension Scheme.

444 Section 116(3) allows the Treasury, through regulations, to provide for disapplication, or application with modifications, of relevant enactments to a qualifying liability which is an occupational pension scheme.

445 Section 116(4) defines "relevant enactment" under section 116(3) as an enactment pertaining to occupational pension schemes which is identified in regulations made under section 98(3).

446 Section 116(5) allows the Treasury to make regulations that provide for these arrangements that are an occupational pension scheme to be treated as a particular type of occupational pension schemes for the purposes of enactments identified in the regulations.

Section 117: Taxation

447 Section 117(1) allows the Treasury to make regulations to modify the way in which any relevant tax would have effect in relation to a new scheme; the members of the new scheme; survivors of those members; or a company established by the Treasury for the purpose of holding assets and liabilities that have been transferred to it from the BBS Pension Scheme or the NRAM Pension Scheme pending their disposal or discharge.

448 Section 117(2) allows for such regulations to treat a new scheme as a registered pension scheme.

449 Section 117(3) allows for the Treasury, by regulations, to vary the way in which any relevant tax would be applied as a consequence of regulations made under this Part of the Act, or in connection with anything done under the regulations, with regard to:

a. the BBS Pension Scheme;

b. the NRAM Pension Scheme;

c. members of the BBS or NRAM pension scheme;

d. persons who have survived a member of either of those schemes, who have an entitlement or right to benefits or future benefits in respect of that member;

e. UK Asset Resolution Limited;

f. persons in respect of whom there is a qualifying liability.

450 Section 117(4) provides that regulations made under section 99(1) or 99(3) may include provision for:

a. a tax provision to be disapplied or applied with modifications;

b. anything done to have or not to have a specified consequence for the purposes of a tax provision;

c. the withdrawal of tax relief and the charging of a relevant tax.

451 Section 117(5) provides that regulations made under section 117(1) or 117(3) can have retrospective effect, provided that the regulations do not charge a relevant tax or withdraw tax relief.

452 Section 117(6) provides definitions for terms used in this section.

Section 118: Information

453 Section 118(1) allows the Treasury, by regulations, to make provision, to require prescribed persons to disclose information prescribed in the regulations to the Treasury.

454 Section 118(2) ensures that provisions under section 118(1) may only apply in respect of information which the Treasury reasonably requires for: making regulations under this Part of the Act; establishing or administering a new public scheme, including the transfer of accrued rights to the scheme; or administering arrangements under which a qualifying liability arises.

455 Section 118(3) allows regulations under section 118(1) to make provision about: the time, form and manner in which the information must be given; and the imposition of a financial penalty on a person who fails to comply with a requirement under the regulations without a reasonable excuse. This includes provision for appeals to a court or tribunal.

456 Section 118(4)(a) and (5) allow for information relating to rights or entitlements to pensions and or other benefits under the BBS Pension Scheme, or a new public scheme (so long as the rights and entitlements are for or in respect of persons who were members of the BBS Pension Scheme), and information relating to the administration of the BBS Pension Scheme or the new public scheme, to be shared between certain parties. These parties are: the Treasury; UK Asset Resolution; the trustees of the BBS Pension Scheme; or any persons administering or exercising functions under the BBS Pension Scheme or a new public scheme.

457 Section 118(4)(b) and 118(6) allows for information relating to rights or entitlements to pensions and or other benefits under the NRAM Pension Scheme, or a new public scheme (so long as those rights and entitlements are for or in respect of persons who were members of the NRAM Pension Scheme), and information relating to and the administration of the NRAM Pension Scheme or the new public scheme, to be shared between certain parties. These parties are: the Treasury; UK Asset Resolution; the trustees of the NRAM Pension Scheme; or any persons administering or exercising functions under the NRAM Pension Scheme or a new public scheme.

458 Section 118(7) and 118(8) ensure that the information sharing arrangements also apply to qualifying liabilities of UK Asset Resolution Limited; Bradford & Bingley; and NRAM Limited. These sections provide for:

a. information relating to qualifying liabilities of UK Asset Resolution to be shared between UK Asset Resolution and the Treasury;

b. information relating to qualifying liabilities of Bradford & Bingley to be shared between UK Asset Resolution; the Treasury; and Bradford & Bingley;

c. information relating to qualifying liabilities of NRAM Limited to be shared between UK Asset Resolution; the Treasury; and NRAM Limited.

459 Section 118(9) ensures that, except under section 118(10), the disclosure of information under this section does not breach any restriction on the disclosure of that information, including any obligation of confidence that exists in relation to that information.

460 Section 118(10) makes clear that this section or regulations made under it do not make provision for the disclosure of information if that disclosure would breach data protection legislation. It also makes clear that duties or powers imposed by this section or the regulations must be considered when determining whether a disclosure would constitute such a breach.

Section 119: Regulations

461 Section 119(1) provides that the Treasury must consult the relevant trustees before making:

a. regulations under section 99 which establish a new public scheme or transfer qualifying accrued rights to the new scheme; or

b. regulations under section 103 which make provision for the transfer of assets and liabilities.

462 Section 119(2) defines "the relevant trustees" as the trustees of the BBS Pension Scheme, where the regulations would affect members or survivors of members of the BBS Pension Scheme and the trustees of the NRAM Scheme, where the regulations would affect members or survivors of members of the NRAM Pension Scheme.

463 Section 119(3) provides that regulations made under section 99 are subject to the affirmative procedure if:

a. those regulations are subject to the consent requirements under section 96(1)(a) and (2); or

b. the provisions of those regulations have retrospective effect.

464 Section 119(4) provides that regulations under section 118(1) are subject to the affirmative procedure if they make provision about the amount of a financial penalty.

465 Section 119(5) provides that a statutory instrument containing regulations under section 105 is subject to annulment in pursuance of a resolution of the House of Commons.

466 Section 119(6) provides that any other regulations made under this Part of the Act are subject to the negative procedure.

Section 120: Interpretation

467 This section provides definitions to be used in this Part of the Act.

Part 3: Judicial Offices

Section 121: Retirement date for holders of judicial offices etc

468 Section 121 introduces Schedule 1 which makes provision to raise the mandatory retirement age, which is the age at which judicial office holders, including judges, tribunal non-legal members, magistrates and coroners, are required to vacate office, to 75.

Section 122: Allowances for judicial office holders

469 Section 122 introduces Schedule 2 which makes provision for the determination of allowances for certain judicial posts.

Section 123: Sitting in retirement offices

470 Section 123 provides for new "sitting in retirement" offices by reference to the existing judicial offices listed in Schedule 3. Where a judicial office is listed in Schedule 3, a sitting in retirement equivalent version of the office will also be created. Section 123(2) confirms that this new office will be given the name of the original judicial office followed by the words "(sitting in retirement)".

471 Schedule 3 consists of six Parts. Each Part of the Schedule lists the existing judicial offices in respect of which a sitting in retirement office will be made. The Parts are separated by the relevant appointing authority (the appointing authority being the person who in law has the authority to make appointments in respect of the sitting in retirement offices created by that Part).

Section 124: Appointment to sitting in retirement offices

472 Section 124 makes provision for the eligibility criteria and steps that must be taken for appointment to a sitting in retirement office. This includes section 124(1) which confirms that sitting in retirement offices are subject to business need, and that the appointee must be qualified for appointment to the relevant original office. Section 124(2) sets out which member of the senior judiciary will be responsible for appointments to each sitting in retirement office.

473 Section 124(3) and (4) together ensure that appointees to sitting in retirement offices have previously held specific judicial offices, to be set out further in regulations by the Northern Ireland Department of Justice, the Welsh Ministers or the Lord Chancellor as appropriate. Such regulations may also prescribe additional eligibility requirements. Section 124(11) confirms that these regulations are to be made under the negative procedure.

474 Section 124(5) to 124(8) requires appropriate concurrence before a sitting in retirement appointment is made.

475 Section 124(9) and 124(10) allows the Lord Chief Justice and the Lord Chief Justice of Northern Ireland respectively to delegate their powers under the section to a nominated judicial office holder to exercise these powers on their behalf.

Section 125: Appointment to sitting in retirement offices: further provision

476 Section 125 makes further provision in respect of appointment to a sitting in retirement office.

477 Section 125(2) confirms that a person appointed to a sitting in retirement office is to be treated for all purposes as if they were still the holder of the pre-retirement office, other than in relation to the exceptions set out in section 125(3) (appointment, removal and tenure, oaths, remuneration, allowances and pensions). This will allow holders of sitting in retirement offices to be deployed flexibly across the courts and tribunals system in the same way as their pre-retirement counterparts. Section 125(4) to 125(9) together specify that terms of appointment and remuneration for the sitting in retirement offices are to be set by the same person who exercises such powers in relation to the original offices, subject to the mandatory retirement age of 75 and to section 126 (Discipline and removal from office).

Section 126: Discipline and removal from office

478 Section 126 makes provision for discipline and the removal of a sitting in retirement office holder from office with the effect that, other than certain exceptions, holders of sitting in retirement offices will be subject to the same disciplinary regimes as the holders of

corresponding original offices. Section 126(1) to 126(5) apply to sitting in retirement offices in England, Wales and Scotland (created by Parts 1, 2, 5 and 6 of Schedule 3), while section 126(6) and 126(7) apply to the Northern Ireland sitting in retirement offices (created by Parts 3 and 4 of Schedule 3).

479 Section 126(1) specifies that the power of removal for relevant sitting in retirement offices is exercisable by the same person who holds such powers in relation to the equivalent original office. The only exception (in section 126(1)(a)) is for judges of the High Court and Court of Appeal, where the sitting in retirement officeholders may be removed by the Lord Chancellor with the agreement of the Lord Chief Justice. In accordance with section 126(2), removal from a sitting in retirement office is subject to the same approval requirements as are required for the corresponding original office. Section 126(1) further provides that a person appointed to a sitting in retirement office can only be removed from office on a qualifying ground, defined by section 126(3) as a ground specified in the person's term of appointment or the ground of inability or misbehaviour.

480 Section 126(4) and 126(5) together mean that, where the original office is a 'judicial office' within the meaning of section 126(4) of the Constitutional Reform Act 2005, the corresponding sitting in retirement office will be subject to Chapter 3 of Part 4 of the Constitutional Reform Act 2005 (discipline) as if it were listed in Schedule 14 to that Act.

481 Section 126(6) and 126(7) together mean that the Northern Ireland sitting in retirement offices (created under Parts 3 and 4 of Schedule 3) are subject to the provisions of section 7 of the Justice (Northern Ireland) Act 2002 (removal from listed offices). Section 126(8) and 126(9) make interpretive provision for section 126.

Section 127: Power to add new offices

482 Section 127(1) creates the power for the 'appropriate national authority' to make regulations to add a judicial office to the list in Schedule 3, with the exception of offices for which the Scottish Parliament have legislative competence (see section 127(3)). Section 127(2) defines "appropriate national authority". The effect of this definition is for the Northern Ireland Department of Justice, the Welsh Ministers or the Lord Chancellor to each be an "appropriate national authority" as appropriate by context.

483 Section 127(4) and 127(5) together create a requirement for either the Lord Chief Justice, Senior President of Tribunals, Lord Chief Justice of Northern Ireland or the President of Welsh Tribunals to be consulted as appropriate before regulations are made under this provision.

484 Section 127(6) confirms that regulations made under section 128 are subject to the affirmative procedure.

Section 128: Consequential etc provision

485 Section 128 brings into effect Schedule 4, which makes consequential amendments relating to sitting in retirement. Section 128(2) allows the "appropriate national authority" to make regulations to amend Schedule 4. Section 128(3) defines "appropriate national authority". The effect of this definition is for the Northern Ireland Department of Justice, the Welsh Ministers or the Lord Chancellor to each be an "appropriate national authority" depending on the context.

486 Section 128(4) provides that any regulations made under section 128(2) may amend, repeal or revoke any provisions made by any enactment. Under section 128(5), regulations made under section 128(2) which deal with primary legislation are subject to the affirmative procedure, while section 128(6) specifies that any other regulations are subject to the negative procedure. Section 128(7) makes interpretive provision.

Part 4: General

Section 129: Regulations and directions

487 This section sets out the procedure that applies where regulations, other than those listed at section 129(8), are made under this Act.

488 Section 129(2) provides that scheme regulations made by the Lord Chancellor or the Treasury must be made by statutory instrument.

489 Section 129(3) provides that a power or duty of a Northern Ireland department to make regulations is exercisable by statutory rule.

490 Section 129(4) and (5) sets out the meaning of "affirmative procedure" and "negative procedure" in the relevant legislatures, and further procedural matters are dealt with by section 129(6) and (7). Section 129(9) confirms that directions given under this Act by the Treasury or the Department of Finance in Northern Ireland may be revoked or varied.

Section 130: Extent

491 This section confirms that the Act extends to England, Wales, Scotland and Northern Ireland, and amendments, repeals or revocations made by this Act have the same extent as the provision amended, repealed or revoked.

492 This section also confirms that Part 5 of Schedule 3 extends to England and Wales only and Part 4 of Schedule 3 to Northern Ireland only.

Section 131: Commencement

493 This section provides when and how the provisions of the Act are to come into force, including powers for certain provisions of the Act to be brought into force by commencement regulations.

Section 131: Short title

494 This section confirms that the short title is the Public Service Pensions and Judicial Offices Act 2022.

Schedule 1: Retirement date for holders of judicial offices etc

Part 1: Amendments of primary legislation

495 Part 1 of Schedule 1 makes a series of amendments to primary legislation which set the MRA for holders of specified judicial offices.

496 Paragraph 25, which amends the JUPRA, in addition to raising the MRA of those judicial offices listed in Schedule 5 to that Act from 70 to 75, also makes a number of relevant changes.

497 Paragraph 25(2)(b) removes the power under section 26(5)-(6) which allowed the extension of certain judges' appointments beyond the age of 70 on an annual basis up to 75 where such extension was considered to be in the public interest.

498 With the new MRA of 75, judicial office holders in scope will only be able to continue exercising office after their MRA to complete a case which began before they reached this age, as provided for under section 27 JUPRA, meaning that there is no longer a requirement for extensions under section 26(5)-(6) JUPRA.

499 Paragraph 25(3) extends the power in section 27 JUPRA to coroners (including Chief Coroner, Deputy Chief Coroner, senior coroners, area coroners and assistant coroners) and traffic commissioners, allowing them to act beyond the MRA in exceptional circumstances to complete a part-heard case.

500 Paragraph 25(4) amends Schedule 5 JUPRA to provide clarification of certain judicial offices and to include additional judicial offices to be captured by the effect of the increase in MRA and other relevant provisions in that Act.

501 Paragraph 33 amends the Courts Act 2003 to raise the MRA of magistrates in the magistrates' courts of England and Wales from 70 to 75. In the context of magistrates, the MRA is the age at which their names are automatically entered into the supplemental list, meaning that they may no longer exercise office as magistrate. However, magistrates in the supplemental list retain the title of "justice of the peace" as recognition of their service.

502 Amendment to section 13(3) of the Courts Act 2003 ensures magistrates continue to be able to exercise office to complete a part-heard case which began before that lay justice reaches the MRA (75); however the provision under section 13(2) of that Act which allowed Bench Chairs to continue exercising office after reaching their MRA to complete their term as Bench Chair is removed. These changes bring magistrates in line with the wider judiciary.

Part 2: Transitional provision

503 Part 2 of Schedule 1 deals with transitional matters relating to the increase in the mandatory retirement age from 70 to 75.

504 Paragraph 43 sets out that the changes made in Parts 1 and 2 of this Schedule will apply to individuals appointed to the specified judicial offices both before and after these amendments come into force.

505 Paragraph 44 makes provision to allow magistrates whose names were entered in the supplemental list before the change in their MRA under paragraph 32 of this Schedule came into force and who are between 70 and 75 on commencement to apply to be reinstated for a temporary period to support business need. Paragraph 44(7) clarifies that this application process will apply to all magistrates aged between 70 and 75 at the date of commencement, regardless of the reason their names were originally entered in the supplemental list. Paragraph 44(5) makes provision to enable this temporary period to be extended where there is business need, and such extensions may occur more than once under paragraph 44(6). Paragraph 44(8) specifies that, once the temporary period specified in the reinstatement is over, the magistrate's name will be re-entered in the supplemental list.

506 Paragraph 45 makes provision to allow the Northern Ireland Judicial Appointments Commission to reappoint lay magistrates in Northern Ireland who ceased to hold office before the change in their mandatory retirement age under paragraph 25(4) came into force and who are younger than 75. Paragraph 45(2)(b) permits the Northern Ireland Department of Justice to make an order regarding eligibility for reappointment in the same way as is currently provided for initial appointments under section 4(7) of the Justice Act (Northern Ireland) 2015.

Part 3: Repeal of spent provisions etc.

507 Part 3 of Schedule 1 repeals those provisions which are no longer required as a consequence of the changes made in the other Parts of this Schedule.

Schedule 2: Allowances payable to judicial office holders

508 Schedule 2 makes changes to a number of pieces of primary legislation to insert the provision to pay allowances in addition to salary or remuneration for relevant judicial office holders in England and Wales.

Schedule 3: Judicial Offices

Part 1: Lord Chief Justice as appointing authority for corresponding sitting in retirement office

509 Part 1 of Schedule 3 provides for the existing judicial offices in respect of which a sitting in retirement office shall be created for which the Lord Chief Justice is the appointing authority.

Part 2: Senior President of Tribunals as appointing authority for corresponding sitting in retirement office

510 Part 2 of Schedule 3 provides for the existing judicial offices in respect of which a sitting in retirement office shall be created for which the Senior President of Tribunals is the appointing authority.

Part 3: Lord Chief Justice of Northern Ireland as appointing authority for corresponding sitting in retirement office

511 Part 3 of Schedule 3 provides for the existing judicial offices in respect of which a sitting in retirement office shall be created for which the Lord Chief Justice of Northern Ireland is the appointing authority.

Part 4: Northern Ireland Judicial Appointments Commission as appointing authority for corresponding sitting in retirement office

512 Part 4 of Schedule 3 provides for the existing judicial offices in respect of which a sitting in retirement office shall be created for which the Northern Ireland Judicial Appointments Commission is the appointing authority.

Part 5: President of Welsh Tribunals as appointing authority for corresponding sitting in retirement office

513 Part 5 of Schedule 3 provides for the existing judicial offices in respect of which a sitting in retirement office shall be created for which the Welsh Ministers are the appointing authority.

Part 6: Lord President of the Court of Session as appointing authority for corresponding sitting in retirement office

514 Part 6 of Schedule 3 provides for the existing judicial offices in respect of which a sitting in retirement office shall be created for which the Lord President is the appointing authority.

Schedule 4: Consequential etc amendments in connection with Part 3

Part 1: Amendments of primary legislation

515 Part 1 of Schedule 4 makes a series of consequential and related amendments to multiple existing legislative provisions to prevent contradiction between those provisions and the new provisions on sitting in retirement being made by these sections.

Part 2: Amendments of secondary legislation

516 Part 2 of Schedule 4 makes a consequential amendment to omit wording from the Access to Justice Act 1999 (Destination of Appeals) Order 2016.

Part 3: Repeal of spent provisions

517 Part 3 of Schedule 4 repeals spent provisions within existing primary legislation.

Commencement

518 Part 1 (Public service pension schemes), so far as it confers a power or is necessary to make regulations or give directions, comes into force on the day on which the Act is passed.

519 So far as it does not come into force on the day on which the Act is passed, Part 1, Chapter 1 (schemes other than judicial schemes and local government schemes) (together with sections 109 and 110 (interpretation of Part) so far as they apply for the purposes of that Chapter) comes into force on 1 October 2023 or such earlier day as Treasury regulations (or an order of the Department of Finance in Northern Ireland) specify. This means that the retrospective remedy contained in Chapter 1 will come into force later, but in any event by 1 October 2023, to correct the position for members' historical entitlement during the remedy period. Unless commencement regulations appoint an earlier day, the retrospective remedy will come into force on 1 October 2023. This allows time to prepare the scheme regulations for each of the pension schemes that must or may be made under the provisions of Chapter 1, but where regulations are ready earlier, they will be able to come into effect sooner.

520 So far as it does not come into force on the day on which the Act is passed, Part 1 Chapter 2 (judicial schemes) (together with sections 109 and 110 (interpretation of Part) so far as they apply for the purposes of that Chapter) comes into force on such day as the Lord Chancellor may specify by regulations.

521 So far as it does not come into force on the day on which the Act is passed, Part 1 Chapter 3 (local government schemes) (together with section 109 and 110 (interpretation of Part) so far as they apply for the purposes of that Chapter) comes into force as Treasury regulations specify.

522 So far as it does not come into force on the day on which the Act is passed, Part 1 Chapter 4 (general) (together with section 109 and 110 (interpretation of Part) so far as they apply for the purposes of that Chapter) comes into force on 1 April 2022, to ensure that the legacy schemes will be closed from this date. This implements the prospective remedy with effect from 1 April 2022 and closes the remedy period.

523 Part 2 (Pensions and Banking (Special Provision) Act 2008 Bodies) comes into force two months from the date on which the Act is passed.

524 Part 3 (Judicial offices) comes into force on the day the Act is passed, other than paragraph 25(3) of Schedule 1 (which amends JUPRA with regard to completion of proceedings after retirement) and section 122 and Schedule 2 (Allowances payable to judicial office holders) which come into force two months from the date on which the Act is passed; and section 123 to 128 and Schedules 3 and 4 (Sitting in retirement offices) which come into force on such day as the Lord Chancellor may specify by regulations.

525 Part 4 (General) comes into force on the day the Act is passed.

Related documents

526 The following documents are relevant to the Act and can be read at the stated locations:

Part 1

- Public Service Pensions: good pensions that last, November 2011

  https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/205837/Public_Service_Pensions_-_good_pensions_that_last._Command_paper.pdf

- Public Service Pensions Act 2013

  https://www.legislation.gov.uk/ukpga/2013/25/contents/enacted

- Public Service Pensions Act (Northern Ireland) 2014

  https://www.legislation.gov.uk/nia/2014/2/contents

- Public service pension schemes: changes to the transitional arrangements to the 2015 schemes Consultation, CP 253, July 2020

  https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/900766/Public_Service_Pensions_Consultation.pdf

- Public service pension schemes: changes to the transitional arrangements to the 2015 schemes Government response to consultation, CP373, February 2021

  https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/958635/Public_Sector_Pensions_Consultation_Response.pdf

- Update on the Cost Control Element of the 2016 Valuations, July 2020

  Policy note - cost cap unpause and McCloud costs.docx (publishing.service.gov.uk)

- Update on the 2016 and 2020 Valuations, July 2021

  Update on the 2016 and 2020 Valuations - GOV.UK (www.gov.uk)

- Senior Salaries Review Body's Major Review of the Judicial Salary Structure 2018 (includes evidence on recruitment and retention issues for the judiciary), October 2018

  https://www.gov.uk/government/publications/major-review-of-the-judicial-salary-structure-2018

- Consultation on a reformed judicial pension scheme, July 2020

  https://www.gov.uk/government/consultations/consultation-on-a-reformed-judicial-pension-scheme

- Consultation on the draft regulations for the reformed judicial pension scheme, July 2021

  https://www.gov.uk/government/consultations/judicial-pension-scheme-2022-scheme-regulations

- Consultation on the proposed response to *McCloud* (judiciary), July 2020

  https://www.gov.uk/government/consultations/consultation-on-the-proposed-response-to-mccloud

- Local Government Pension Scheme amendments to statutory underpin written ministerial statement, May 2021

  https://questions-statements.parliament.uk/written-statements/detail/2021-05-13/hcws26

- DLUHC LGPS England and Wales consultation landing page, July 2020

  https://www.gov.uk/government/consultations/local-government-pension-scheme-amendments-to-the-statutory-underpin

- Local Government Pensions Scheme Consultation document, July 2020

  https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/901173/Condoc_-_amendments_to_LGPS_underpin_-_FOR_PUBLICATION.pdf

Part 2

- Bradford and Bingley plc Transfer of Securities and Property etc Order 2008, Article 26 and paragraph 10 of Schedule 3 to the B (S.I. 2008/2546)
  https://www.legislation.gov.uk/uksi/2008/2546/contents/made

- BUDGET 2020 DELIVERING ON OUR PROMISES TO THE BRITISH PEOPLE, page 101, paragraph 2.283
  https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/871799/Budget_2020_Web_Accessible_Complete.pdf -

Part 3

- Consultation on Judicial Mandatory Retirement Age, July 2020

  https://consult.justice.gov.uk/digital-communications/judicial-mandatory-retirement-age/supporting_documents/judicialmandatoryretirementageconsultation.pdf

- Government response to Consultation on Judicial Mandatory Retirement Age, July 2020

  https://www.gov.uk/government/consultations/consultation-on-judicial-mandatory-retirement-age

- Senior Salaries Review Body's Report: 2020 (contains information on leadership allowances or judges)

  https://www.gov.uk/government/publications/senior-salaries-review-body-report-2020

- Senior Salaries Review Body's Report: 2021 (contains information on implementation of leadership allowances and impact of proposed changes to judicial pensions)

  https://www.gov.uk/government/publications/senior-salaries-review-body-report-2021

Annex A - Territorial extent and application in the United Kingdom

527 The provisions of this Act extend and apply to England and Wales and Scotland and Northern Ireland with the following exceptions:

Do not extend to England

- Section 102 (Power of Department of Finance to make scheme for compensation)

Do not extend to Wales

- Section 102 (Power of Department of Finance to make scheme for compensation)
- Section 122 (Allowances for judicial office holders)
- Schedule 2 (Allowances payable to judicial office holders)

Do not extend to Scotland

- Section 102 (Power of Department of Finance to make scheme for compensation)

Provision	England	Wales	Scotland	Northern Ireland
	Extends to E & W and applies to England?	**Extends to E & W and applies to Wales?**	**Extends and applies to Scotland?**	**Extends and applies to Northern Ireland?**
Part 1 - Public Service Pension Schemes - Chapter 1	Yes	Yes	Yes	Yes
Part 1 - Public Service Pension Schemes - Chapter 2	Yes	Yes	Yes	Yes
Part 1 - Public Service Pension Schemes - Chapter 3	Yes	Yes	Yes	Yes
Part 1 - Public Service Pension Schemes - Section 88	In part	In part	In part	Yes
Part 1 - Public Service Pension Schemes - Section 89	In part	In part	In part	Yes
Part 1 - Public Service Pension Schemes - Section 90	Yes	Yes	Yes	Yes
Part 1 - Public Service Pension Schemes - Section 91	Yes	Yes	Yes	Yes
Part 1 – Public Service Pension Schemes – Section 92	In part	In part	In part	Yes

Provision	England	Wales	Scotland	Northern Ireland
	Extends to E & W and applies to England?	**Extends to E & W and applies to Wales?**	**Extends and applies to Scotland?**	**Extends and applies to Northern Ireland?**
Part 1 – Public Service Pension Schemes – Section 93	In part	In part	In part	Yes
Part 1 - Public Service Pension Schemes - Section 94	In part	In part	In part	Yes
Part 1 - Public Service Pension Schemes - Section 95	In part	In part	In part	Yes
Part 1 - Public Service Pension Schemes - Section 96	In part	In part	In part	Yes
Part 1 - Public Service Pension Schemes - Section 97	Yes	Yes	Yes	Yes
Part 1 - Public Service Pension Schemes - Section 98	In part	In part	In part	Yes
Part 1 - Public Service Pension Schemes - Section 99	Yes	Yes	Yes	Yes
Part 1 - Public Service Pension Schemes - Section 100	Yes	Yes	Yes	Yes
Part 1 - Public Service Pension Schemes - Section 101	Yes	Yes	Yes	Yes
Part 1 - Public Service Pension Schemes - Section 102	No	No	No	Yes
Part 1 - Public Service Pension Schemes - Section 103	Yes	Yes	Yes	Yes
Part 1 - Public Service Pension Schemes - Section 104	Yes	Yes	Yes	Yes
Part 1 - Public Service Pension Schemes - Section 105	Yes	Yes	Yes	Yes
Part 1 - Public Service Pension Schemes - Section 106	Yes	Yes	Yes	Yes
Part 1 - Public Service Pension Schemes - Section 107	Yes	Yes	Yes	Yes
Part 1 - Public Service Pension Schemes - Section 108	Yes	Yes	Yes	Yes
Part 1 - Public Service Pension Schemes - Section 109	Yes	Yes	Yes	Yes
Part 1 - Public Service Pension Schemes - Section 110	Yes	Yes	Yes	Yes
Part 2 – Pensions and Banking (Special Provision) Act 2008 Bodies	Yes	Yes	Yes	Yes
Part 3 - Judicial Offices - Section 121	Yes	Yes	Yes	Yes

Provision	England	Wales	Scotland	Northern Ireland
	Extends to E & W and applies to England?	Extends to E & W and applies to Wales?	Extends and applies to Scotland?	Extends and applies to Northern Ireland?
Part 3 - Judicial Offices - Section 122	Yes	No	Yes	Yes
Part 3 - Judicial Offices - Section 123	Yes	Yes	Yes	Yes
Part 3 - Judicial Offices - Section 124	In part	In part	In part	In part
Part 3 - Judicial Offices - Section 125	Yes	Yes	Yes	Yes
Part 3 - Judicial Offices - Section 126	In part	In part	In part	Yes
Part 3 - Judicial Offices - Section 127	Yes	Yes	Yes	Yes
Part 3 - Judicial Offices - Section 128	Yes	Yes	Yes	Yes
Part 3 - Judicial Offices - Schedule 1	In part	In part	In part	In part
Part 3 - Judicial Offices - Schedule 2	Yes	No	Yes	Yes
Part 3 - Judicial Offices - Schedule 3	In part	In part	In part	In part
Part 3 - Judicial Offices - Schedule 4	In part	In part	In part	In part
Part 4 - General - Section 129	Yes	Yes	Yes	Yes
Part 4 - General - Section 130	Yes	Yes	Yes	Yes
Part 4 - General - Section 131	Yes	Yes	Yes	Yes
Part 4 - General - Section 132	Yes	Yes	Yes	Yes

Subject matter and legislative competence of devolved legislatures

In Part 1, Chapter 1:

- Public service pensions are not devolved, with the exception of Northern Ireland. The Act includes amendments to the relevant Northern Ireland legislation.

In Part 1, Chapter 2:

- In terms of current legislation, pension provision for Welsh and most Scottish devolved (and reserved) judicial office holders is provided for in the UK judicial pension schemes and the remedy provisions as described will apply equally to them. In respect of Northern Ireland, while most office holders are members of the UK schemes, a small number of devolved judiciary were provided with a 2015 scheme under Northern Ireland legislation. The Act includes equivalent amendments to the relevant Northern Ireland legislation which provided for a 2015 reformed scheme to implement fully the *McCloud* remedy.

In Part 1, Chapter 3:

- The Local Government Pension Scheme is not devolved, with the exception of Northern Ireland.

In Part 1, Chapter 4:

- The general provisions in Chapter 4 are not devolved to Scotland or Wales with the exception of section 97 (amendments related to the judiciary). The relevant aspects of pension provision are devolved to Northern Ireland, but there are some provisions that relate to the functions of UK Government (either where pensions are controlled by the UK Government or relate to the functions of the UK Government in administering the remedy). Those provisions that are not devolved to Northern Ireland are section 96, 99, 101, 104, and 106.

In Part 2:

- None of the provisions detailed in Part 2 are devolved matters.

In Part 3:

- The judicial allowances measure provides the power for the Lord Chancellor to determine allowances for posts reserved to the UK Government where this does not exist as well as for the Devolved Administrations in Scotland and Northern Ireland to determine allowances for judicial office holders where this power does not currently exist.

- Provisions to raise the MRA to 75 for certain judicial offices extends UK-wide. Included are a number of judicial offices in Wales, Scotland and Northern Ireland, whose MRA is a devolved matter for Senedd Cymru, the Scottish Parliament and the Northern Ireland Assembly respectively.

- Sections 123 to 127, which make provision for the new sitting in retirement office, apply UK-wide. The judicial office holders in scope of this provision (set out in Schedule 3) include those whose terms of appointment are devolved matters for the Senedd Cymru and Northern Ireland Assembly. Judicial office holders whose terms of appointment are a devolved matter for the Scottish Parliament are not in scope of this provision.

In Part 4:

- These provisions relate to the regulations and directions, extent, commencement and short title. These provisions are not devolved, with the exception of Northern Ireland.

Annex B - Hansard References

528 The following table sets out the dates and Hansard references for each stage of the Act's passage through Parliament.

Stage	Date	Hansard Reference
House of Lords		
Introduction	19 July 2021	Vol.814 Col.16
Second Reading	07 September 2021	Vol.814 Col.776
Grand Committee	11 October 2021	Vol.814 Col.335GC
Report	29 November 2021	Vol.816 Col.1138
Third Reading	06 December 2021	Vol.816 Col.1652
House of Commons		
Introduction	07 December 2021	Not referenced
Second Reading	05 January 2022	Vol.706 Col. 84
Public Bill Committee First session Second session	 27 January 2022 27 January 2022	 Col.1 Col.43
Report and Third Reading	22 February 2022	Vol.709 Col.204
Lords Consideration of Commons Amendments	09 March 2022	Vol.819 Col.1433
Royal Assent	10 March 2022	House of Lords Vol.819 Col.1541
		House of Commons Vol.710 Col.485

Annex C - Progress of Bill Table

529 This Annex shows how each section and Schedule of the Act was numbered during the passage of the Bill through Parliament.

Section of the Act	Bill as Introduced in the Lords	Bill as amended on Report in the Lords	Bill as introduced in the Commons	Bill as amended in Committee in the Commons	Bill as amended on Report in the Commons
Section 1	1	1	1	1	1
Section 2	2	2	2	2	2
Section 3	3	3	3	3	3
Section 4	4	4	4	4	4
Section 5	5	5	5	5	5
Section 6	6	6	6	6	6
Section 7	7	7	7	7	7
Section 8	8	8	8	8	8
Section 9		9	9	9	9
Section 10	9	10	10	10	10
Section 11	10	11	11	11	11
Section 12	11	12	12	12	12
Section 13		13	13	13	13
Section 14	12	14	14	14	14
Section 15	13	15	15	15	15
Section 16	14	16	16	16	16
Section 17	15	17	17	17	17
Section 18	16	18	18	18	18
Section 19	17	19	19	19	19
Section 20	18	20	20	20	20
Section 21	19	21	21	21	21
Section 22	20	22	22	22	22
Section 23	21	23	23	23	23
Section 24	22	24	24	24	24
Section 25		25	25	25	25
Section 26	23	26	26	26	26
Section 27	24	27	27	27	27
Section 28	25	28	28	28	28
Section 29	26	29	29	29	29
Section 30	27	30	30	30	30
Section 31	28	31	31	31	31
Section 32	29	32	32	32	32

Section 33	30	33	33	33	33
Section 34	31	34	34	34	34
Section 35	32	35	35	35	35
Section 36	33	36	36	36	36
Section 37	34	37	37	37	37
Section 38	35	38	38	38	38
Section 39	36	39	39	39	39
Section 40	37	40	40	40	40
Section 41	38	41	41	41	41
Section 42	39	42	42	42	42
Section 43	40	43	43	43	43
Section 44	41	44	44	44	44
Section 45	42	45	45	45	45
Section 46	43	46	46	46	46
Section 47	44	47	47	47	47
Section 48	45	48	48	48	48
Section 49	46	49	49	49	49
Section 50	47	50	50	50	50
Section 51	48	51	51	51	51
Section 52	49	52	52	52	52
Section 53	50	53	53	53	53
Section 54	51	54	54	54	54
Section 55	52	55	55	55	55
Section 56	53	56	56	56	56
Section 57	54	57	57	57	57
Section 58	55	58	58	58	58
Section 59	56	59	59	59	59
Section 60		60	60	60	60
Section 61	57	61	61	61	61
Section 62	58	62	62	62	62
Section 63	59	63	63	63	63
Section 64	60	64	64	64	64
Section 65	61	65	65	65	65
Section 66	62	66	66	66	66
Section 67	63	67	67	67	67
Section 68	64	68	68	68	68
Section 69	65	69	69	69	69
Section 70	66	70	70	70	70
Section 71	67	71	71	71	71

Section 72	68	72	72	72	72
Section 73	69	73	73	73	73
Section 74	70	74	74	74	74
Section 75	71	75	75	75	75
Section 76	72	76	76	76	76
Section 77	73	77	77	77	77
Section 78	74	78	78	78	78
Section 79				79	79
Section 80				80	80
Section 81				81	81
Section 82				82	82
Section 83				83	83
Section 84				84	84
Section 85				85	85
Section 86	75	79	79	86	86
Section 87				87	87
Section 88	76	80	80	88	88
Section 89	77	81	81	89	89
Section 90	78	82	82	90	90
Section 91		83	83	91	91
Section 92				92	92
Section 93				93	93
Section 94	79	84	84	94	94
Section 95		85	85	95	95
Section 96	80	86	86	96	96
Section 97	81	87	87	97	97
Section 98	82	88	88	98	98
Section 99	83	89	89	99	99
Section 100					100
Section 101	84	90	90	100	101
Section 102	85	91	91	100	102
Section 103	86	92	92	102	103
Section 104	87	93	93	103	104
Section 105	88	94	94	104	105
Section 106	89	95	95	105	106
Section 107	-	-	-	-	107
Section 108	90	96	96	106	108
Section 109	91	97	97	107	109
Section 110	92	98	98	108	110

Section 111	93	99	99	109	111
Section 112	94	100	100	110	112
Section 113	95	101	101	111	113
Section 114	96	102	102	112	114
Section 115	97	103	103	113	115
Section 116	98	104	104	114	116
Section 117	99	105	105	115	117
Section 118	100	106	106	116	118
Section 119	101	107	107	117	119
Section 120	102	108	108	118	120
Section 121	103	109	109	119	121
Section 122	104	110	110	120	122
Section 123	105	111	111	121	123
Section 124	106	112	112	122	124
Section 125	107	113	113	123	125
Section 126	108	114	114	124	126
Section 127	109	115	115	125	127
Section 128	110	116	116	126	128
Section 129	111	117	117	127	129
Section 130	112	118	118	128	130
Section 131	113	119	119	129	131
Section 132	114	110	120	130	132
Schedule 1	Schedule 1	Schedule 1	Schedule 1	Schedule 1	Schedule 1
Schedule 2	Schedule 2	Schedule 2	Schedule 2	Schedule 2	Schedule 2
Schedule 3	Schedule 3	Schedule 3	Schedule 3	Schedule 3	Schedule 3
Schedule 4	Schedule 4	Schedule 4	Schedule 4	Schedule 4	Schedule 4

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