

EXPLANATORY MEMORANDUM TO
THE PUBLIC SERVICE (CIVIL SERVANTS AND OTHERS) PENSIONS
(AMENDMENT) REGULATIONS 2021

2021 No. 240

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Cabinet Office and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

- 2.1 These Regulations amend the Public Service (Civil Servants and Others) Pensions Regulations 2014 (the “2014 Regulations”) made under the Public Service Pensions Act 2013 (the “Act”) to make provision for the contributions payable by members of that scheme for the period of 1st April 2021 to 31st March 2022.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

- 3.2 As the instrument is subject to negative resolution procedure, there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

4. Extent and Territorial Application

- 4.1 The extent and territorial application of this instrument is the United Kingdom.

5. European Convention on Human Rights

- 5.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

6. Legislative Context

- 6.1 The Act gives the Minister for the Civil Service powers to make and maintain a pension scheme for the Civil Service and certain other (mainly public service) employees.
- 6.2 The 2014 Regulations established such a scheme, known as the *Alpha* scheme, which has been in operation since 1st April 2015. Regulation 134 of the 2014 Regulations makes provision for the contributions payable by scheme members.

7. Policy background

What is being done and why?

- 7.1 The 2014 Regulations established a new Civil Service pension scheme from 1st April 2015. Regulation 134 of the 2014 Regulations makes provision for the member contributions rate payable by a scheme member up to 31st March 2021. The member contributions rates and associated annualised rate of pensionable earnings bands (“pensionable earnings bands”) set out in Regulation 134 are designed to yield an average of 5.6% of members’ pensionable earnings. Regulation 134 is silent on member contributions rates from 1st April 2021, and provision needs to be made for this.
- 7.2 The purpose of this instrument is to extend (and not alter) the current member contributions rates and to slightly increase 2020/21 pensionable earnings bands from 1st April 2021 to enable the scheme to continue to collect member contributions. The slight increase to pensionable earnings bands will benefit a very small number of members who will pay a lower contribution rate.
- 7.3 The Chief Secretary to the Treasury (the “Chief Secretary”) announced on 30th January 2019 that the Government was pausing one element of the valuations of public service pensions; the mechanism for assessing the value of public service pensions (the “cost control mechanism”). The Chief Secretary’s statement advised that the judgment of the Court of Appeal in *Lord Chancellor and Secretary of State for Justice and another v McCloud and others* and *Secretary of State for the Home Department and others v Sargeant and others* [2018] EWCA Civ 2844 on part of the 2015 pension reforms meant that it was not possible to assess the value of current public service pension arrangements with any certainty, and the cost control mechanism was being paused until there is certainty about the value of public service pensions to employees from April 2015 onwards. On 16th July 2020 the Government announced that the pause to the control mechanism had been lifted. However, the procedure for this element of the valuation, and any considerations of possible impact on member contributions, is not expected to be completed before 1st April 2021.
- 7.4 Section 22 of the Act provides for an enhanced consultation and report process in the event of proposed changes to 'protected elements' (such as members’ contribution rates and benefit accrual rates) within 25 years of 2015. The presumption is that it is not desirable to make changes to the protected elements within the protected period (which ends on 31st March 2040) unless there is a specific reason for doing so; for example, as a result of the cost control mechanism.
- 7.5 This amendment to the 2014 Regulations relates to a protected element but has the effect of keeping the current member contributions rates and slightly increasing associated pensionable earnings bands, and ensures that member contributions can continue to be lawfully collected from 1st April 2021, thus safeguarding the effective operation of the Civil Service pension scheme.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

- 8.1 This instrument does not relate to withdrawal from the European Union.

9. Consolidation

9.1 The Department has no plans to consolidate the legislation at this time.

10. Consultation outcome

10.1 The consultation was closed on the 25th January. Responses received from the non-affiliated unions, DPF and Unison, confirmed no objections to the contributions rates being extended to 2021/22.

10.2 A collective response was received from the NTUC (covering our main recognised unions FDA, GMB, NIPSA, PCS, POA, Prospect and Unite). The NTUC expressed their frustrations at the third rollover of member contributions and emphasised the unacceptable position they have been left in.

10.3 The NTUC outlined they are opposed to the simple rollover of member contributions and listed four demands:

- We demand a clear timetable for the completion of the cost cap mechanism through to implementation of changes in the event of a breach, including NTUC and SAB engagement.
- We are calling for HM Treasury to expedite the publishing of its response to the consultation on remedying McCloud and new Treasury Directions.
- The Government Actuaries Department to do all preparatory work to expedite the time that will be taken for the SAB to receive updated results from the cost cap mechanism, and for employers to prepare for implementation.
- We want a clear commitment that the priority will be given to reduce member contributions at least in line with previous SAB recommendations to the Minister following the 2016 draft valuation results, and with a value which delivers the full amount of a reduction for the period from 1st April 2019 to 31st March 2023.

10.4 The NTUC demands are focussed on the Cost Cap 2016 and Valuation processes owned by HM Treasury. Cabinet Office Officials will engage with HM Treasury and inform them of the response from the NTUC to ensure the demands are considered in regard to the Cost Cap 2016 and Valuation. Cabinet Office officials will ensure that there is consistent communication with the NTUC in regards to the progression of these demands through the SAB. The NTUC's demand did not include any counter proposals and have not persuaded us to make any changes to the proposal that was subject to consultation.

11. Guidance

11.1 No guidance has been produced to accompany this instrument, the contents of which are self-explanatory.

12. Impact

12.1 There is no impact on business, charities or voluntary bodies.

12.2 There is no impact on the public sector of maintaining the current level of member contributions. The impact of not making this Regulation would be to reduce the effective operation of the scheme and the income received by the scheme by around £828 million per annum.

12.3 An Impact Assessment has not been prepared for this instrument.

13. Regulating small business

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

14. Monitoring & review

14.1 The Public Service (Civil Servants and Others) Pensions Regulations 2014 are kept under regular review by the Cabinet Office in its capacity as the pension scheme manager.

15. Contact

15.1 Charlotte Simonds at the Cabinet Office (Telephone: 07546653773 or email: charlotte.simonds@cabinetoffice.gov.uk) can answer any queries regarding the instrument.

15.2 Kerrie Cureton-Williams, Deputy Director, Civil Service & Royal Mail Pensions, can confirm that this Explanatory Memorandum meets the required standard.

15.3 Minister Lopez, Minister of State at the Cabinet Office and Her Majesty's Treasury, can confirm that the Explanatory Memorandum meets the required standard.