

These notes refer to the Public Service Pensions Act (Northern Ireland) 2014 (c.2) which received Royal Assent on 11 March 2014

Public Service Pensions Act (Northern Ireland) 2014

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Establishment of new schemes

Section 3: Scheme regulations

Section 3 contains additional provisions about how the power to make scheme regulations under the Act may be used.

By subsection (1), scheme regulations can make such provision as the responsible authority considers appropriate, provided they are in accordance with the requirements in the rest of the Act. For sections that limit the type of provision that may be made, or which require provisions of a specific kind to be included, see for example:

- section 4, which requires schemes to have a scheme manager who is to be responsible for managing or administering the scheme;
- section 5, which requires schemes to provide for the establishment of a pension board to assist the scheme manager with certain matters;
- section 7, which requires schemes to provide for the establishment of a scheme advisory board to advise on certain matters;
- section 8, which sets constraints on the design of schemes, including requiring schemes that are defined benefits schemes to provide those benefits through a “career average revalued earnings scheme” (or CARE scheme) or such other description of defined benefits scheme as the Department of Finance and Personnel may specify in regulations (but not a final salary scheme);
- section 9, which provides for the revaluation of pensionable earnings of a person in a CARE scheme in accordance with changes in prices or earnings as set out in an annual order made by the Department of Finance and Personnel;
- section 10, which contains requirements relating to the normal pension age of schemes made under this Act; and,

- sections 11 and 12, which require scheme regulations to contain a mechanism for regular valuations of the scheme and to provide for a cap on the costs to employers of public service schemes.

The provisions which can be made include in particular, as subsection (2)(a) says, any matter set out in Schedule 3. That Schedule sets out a non-exhaustive list of matters which can be included in scheme regulations for public service pension schemes. If a matter is not mentioned in Schedule 3 that does not prevent it from forming part of such a scheme, provided it is within the powers given by sections 1(1) and 3(1).

Scheme regulations may also include consequential, supplementary, incidental or transitional provisions (see subsection (2)(b)).

Subsection (3)(a) allows scheme regulations to make different provision for different cases, including different provision for different descriptions of persons. This is a common provision in regulation-making powers to ensure that they are appropriately flexible. For example, it would allow schemes to be deemed ‘connected’ (under section 4(6)) for some purposes but not for others.

Subsection (3)(b) allows scheme regulations to include provisions that have retrospective effect (in relation to a period that precedes the regulations coming into force), subject to section 23 (which sets out procedural requirements that apply to the exercise of the power to make retrospective provision). 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 it would not be desirable to delay the benefit of a particular change but where time is required to consider the consequences and appropriate method of making the change.

Subsection (3)(c) allows scheme regulations to give persons who have functions under the regulations discretion in carrying out those functions. This permits ministers or other scheme managers, for example, to make their own decisions within a framework set by scheme regulations.

Subsection (4) allows scheme regulations to amend primary or secondary legislation for consequential purposes. Only primary legislation passed before or within the period of 12 months from the date on which the Act received Royal Assent can be amended. This power may be necessary where legislation is inconsistent with or requires modification as a consequence of scheme regulations or a provision of this Act. Section 24(1)(a) further states that any amendment to primary legislation must be made by the affirmative procedure. The meaning of ‘affirmative procedure’ is given in section 34.

Subsection (5) provides that scheme regulations made under powers in this Act require consent of the Department of Finance and Personnel.

The Department of Finance and Personnel intends to put in place appropriate arrangements to ensure that requirements for consent under this section, or where applicable for the administrative approval of other spending

These notes refer to the Public Service Pensions Act (Northern Ireland) 2014 (c.2) which received Royal Assent on 11 March 2014

commitments, are exercised in a way that balances appropriate scrutiny with administrative efficiency.