

EXPLANATORY MEMORANDUM TO
THE PUBLIC SERVICE (CIVIL SERVANTS AND OTHERS) PENSIONS
(AMENDMENT) REGULATIONS 2018

2018 No. 537

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 To amend the Public Service (Civil Servants and Others) Pensions Regulations 2014 (“the 2014 Regulations”) made under the Public Service Pensions Act 2013 (“the Act”). The amendments correct errors and resolve anomalies that have been identified in the original regulations. In addition, they bring the regulations in line with the latest legislation relating to certain types of statutory leave associated with the birth/adoption of a child.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 The substantive provisions of the Regulation have retrospective effect. Retrospective provision is authorised by section 3(3) of the Act.

Other matters of interest to the House of Commons

- 3.2 As this instrument is subject to the negative resolution procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

- 4.1 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) employers.
- 4.2 The 2014 Regulations established such a scheme, known as the Alpha scheme, which has been in operation since 1st April 2015.

5. Extent and Territorial Application

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

6. European Convention on Human Rights

- 6.1 The Minister for Implementation, Oliver Dowden MP, has made the following statement regarding Human Rights:

“In my view the provisions of the Public Service (Civil Servants and Others) Pensions (Amendment) Regulations 2018 are compatible with the Convention rights.”

7. Policy background

What is being done and why

7.1 These Regulations correct drafting errors that have been identified since the 2014 Regulations were made; resolve anomalies that have recently come to light; and bring the 2014 Regulations in line with the latest legislation relating to certain types of statutory leave entitlement associated with the recent birth/adoption of a child.

7.2 Clarification of the timing of index adjustment (and which opening balance it refers to)

Regulation 2 of the 2014 Regulations provides a definition of ‘index adjustment’, which relates to the uprating of pension earned in a scheme year. The amendment to this definition by regulation 3(h) corrects an error to ensure that the index adjustment is applied to pension earned in the year in which the index adjustment relates to.

7.3 Negative retirement index adjustment

Regulation 11 provides for the calculation of the “retirement index adjustment” to be modified in respect of the scheme year starting in 2015. The retirement index adjustment is used to revalue pensions in the final year of scheme membership, and the modification provides that the revaluation in the scheme year starting in 2015 cannot be less than zero.

7.4 Actuarial buyout provisions

Chapter 5 of the 2014 Regulations set out options that may be available to members who leave the Alpha scheme. This includes the option for those members who are entitled to immediate payment of a full retirement pension but have not reached their normal pension age, to ‘buy-out’ the actuarial reduction in their pension that would otherwise apply. Regulations 18 and 19 introduce a new option to such members, subject to certain conditions, to partially buy out the actuarial reduction and receive a smaller reduction in their pension. This amendment enables future changes of policy, for example, to allow for the future introduction of the Government’s planned £95,000 cap on exit payments and does not signal or deliver any immediate change of policy.

7.5 Clarification and updating of ‘assumed pay’ provisions

Regulations 14, 22 and 23 clarify that where a member is receiving “assumed pay”, certain calculations are made by reference to that assumed pay rather than their pensionable earnings. In addition, the amendments clarify that only ordinary maternity leave is relevant for an assumed pay scenario (in line with the policy intention) and that periods of sick absence on sick pay at pension rate are not pensionable.

7.6 Definition of Active Member

Regulation 4 amends the definition of ‘Active Member’ to ensure that those on unpaid leave can continue to be treated as active members of the scheme rather than as deferred members (so that, for example, a death in service benefit may be paid in respect of a member who dies whilst on a career break).

7.7 Updated references to child related leave

Regulations 10, 25, 26 and 28 amend various provisions of the 2014 Regulations in respect of child related leave following the introduction of shared parental leave.

7.8 *Death after ill-health retirement of a transition member*

The 2014 Regulations provide that where a transition member (a former member of the Principal Civil Service Pension Scheme (“PCSPS”) who transitioned into the Alpha scheme on 1 April 2015) leaves on ill-health retirement, then dies before reaching their PCSPS normal pension age, their death benefit nominee is paid a death in deferment lump sum death benefit under the PCSPS and a lump sum under the Alpha scheme. Regulation 24 removes an unnecessary reference to service in the PCSPS from the calculation of the latter in regulation 131(2) of the 2014 Regulations.

7.9 *Regulations 41(2) and 42(2)*

Regulations 41(2) and 42(2) of the 2014 Regulations, refer to regulations 153 and 152 respectively. The references have been transposed, and regulations 12 and 13 correct the error.

7.10 *Explicitly excluding certain schemes from the definition of a ‘connected scheme’*

The Act provides that, subject to exceptions specified in scheme regulations, a scheme made under the Act and another pension scheme are connected if the schemes make provision in relation to persons of the same description. The government is committed to the reform of certain smaller public service pension schemes, and it is likely that the members of many such schemes will be transferred to the Alpha scheme. However, the intention is not for those schemes to be ‘connected’ with the Alpha scheme, and as such the amendments made by regulations 4 and 5 operate to exclude them, and compensation and injury benefit schemes, from the definition of ‘connected scheme’.

7.11 *Provide Scheme Manager discretion to treat service with certain other pension schemes as qualifying service in Alpha*

The 2014 Regulations provide that a member must complete two years qualifying service in order to receive benefits under the scheme. Regulation 15 amends the definition of ‘qualifying service’ in regulation 59 of the 2014 Regulations in order to allow the scheme manager to treat service in another pension scheme as qualifying service for the Alpha scheme. This amendment will enable the scheme manager to exercise a discretion where, for example, a person who has been transferred into Alpha as part of the reform of smaller public service pension schemes but leaves service within two years of that transfer and would otherwise not qualify for a pension.

7.12 *Ill-health retirement from Alpha shortly after switching whilst already on no pay*

Regulation 29 provides for certain transition members to receive an enhanced rate of upper tier top up earned pension (pension payable to a member whose breakdown in health involves total incapacity for employment) if they were on a period of sick leave at nil or reduced pay in the first twelve months of their membership of the Alpha scheme before taking ill-health retirement. The Alpha scheme provides for an enhancement. This amendment is required to remedy an issue whereby such members would not otherwise be entitled to the same level of enhancement owing to their reduced period of service in the Alpha scheme.

7.13 *Change to Partnership switching time limits*

The 2014 Regulations provide that a member may only switch between Alpha and a Partnership Pension Account on 1 April or 1 October following three months’ notice.

The amendments made by regulations 6, 7 and 8 allow a member to switch on the first day of any month and reduce the notice period to two months. The definition of Partnership Pension Account is also updated to reflect changes in the governance of the Civil Service defined contribution pension schemes.

7.14 *Ill-health retirement from Alpha having previously taken partial retirement from the PCSPS*

Regulations 16 and 17 amend regulations 72 and 73 of the 2014 Regulations to correct an error in respect of ill-health retirement. The intention is that any member who has taken partial retirement must meet the requirement for an upper tier ill-health retirement pension but will receive a pension calculated as though it were a lower tier ill-health retirement pension. The effect of the new regulation is to confirm that the restriction applies to a member who has taken partial retirement from the PCSPS not just a member who has taken partial retirement from the Alpha scheme.

7.15 *Removal of the requirement for a partner declaration to have been completed in order to qualify for a partner's pension*

In the case of *Brewster* [2017] UKSC 8, the Supreme Court stated that, where an occupational pension scheme provides a survivor's pension for the unmarried partner of a scheme member, it is unlawful for the payment of that pension to be dependent on the member having nominated their partner. Regulations 20 and 21 remove the requirement to nominate an unmarried partner in order for them to receive a pension in order to give effect to the Supreme Court's decision.

7.16 *Transitional protection for other public body pension schemes*

Regulation 29 amends the circumstances where a member of an existing pension scheme will be given transitional protection when joining the Alpha scheme. It removes the requirement that the individual be an active member on the date their existing scheme is closed in order to remedy an issue where members may transition to Alpha prior to their scheme closing date.

8. Consultation outcome

8.1 Employee representatives were consulted about these regulations. Those representatives indicated that they had no objections to the amendments being implemented.

9. Guidance

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

10. Impact

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

10.2 The impact on the public sector is minimal. There will be a saving in administrative expenses as a direct result of clarification and changes in approach which smooth the working of the Scheme.

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

11. Regulating small business

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

12. Monitoring & review

- 12.1 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.

13. Contact

- 13.1 Colin Hennem at the Cabinet Office (Telephone: 01256 846131 or email: colin.hennem@cabinetoffice.gov.uk) can answer any queries regarding the instrument.