

PUBLIC SERVICE PENSIONS ACT 2013

EXPLANATORY NOTES

COMMENTARY ON SECTIONS AND SCHEDULES

Final

Section 40: Extent

217. This Act extends to England and Wales, Scotland and Northern Ireland. However, where the Act amends or repeals a legislative provision in another Act, the amendment or repeal has the same extent as the provision it amends or repeals.

Section 41: Commencement

218. This section provides when and how the provisions of the Act are to come into force.
219. The provisions listed in *subsection (1)* come into force automatically on the day the Act is enacted. They include the provisions to extend access to the existing Principal Civil Service Pension Scheme in section 29 and Schedule 9; the provisions to reform the pension arrangements of the great offices of state in section 33 and Schedule 11; and the general provisions in sections 36 to 41.
220. By *subsection (2)*, the remaining provisions are to be brought into force on such day or days as appointed by the Treasury in an order. By *subsection (3)* such an order may appoint different days for different purposes, and may make provisions with transitional, transitory or saving effect.

Schedule 1: Persons in public service: definitions

221. [Schedule 1](#) contains definitions of the persons in public service listed in section 1(2) for whom schemes may be made under section 1.

Schedule 2: Responsible authorities

222. This schedule lists the Ministers who may exercise the power under section 1 to make scheme regulations for the main categories of persons in public service set out in that section.

Schedule 3: Scope of scheme regulations: supplementary matters

223. This schedule contains a list of the type of provision that may, in particular, be included in scheme regulations made under section 1. It is not an exhaustive list, but an indication of what can be included in scheme regulations.
224. [Paragraph 1](#) allows for scheme regulations to set out details of the persons who are eligible for membership of the scheme and the conditions that apply to eligibility. Scheme regulations may relate to a narrower class than those who could be covered by the scheme (for example where some of those workers belong to other public service schemes).

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(c.25) which received Royal Assent on 25 April 2013*

225. [Paragraph 2](#) provides a non-exhaustive list of some of the benefits for employees that may be written into regulations, including: pensions; benefits payable on death (including death in service); and compensation payments for death, injury or redundancy.
226. [Paragraph 3](#) provides a non-exhaustive list of some of the types of people to whom benefits can be paid under the regulations of the scheme. These include: active, deferred and pensioner members; pension credit members; and their surviving spouses, civil partners and dependants.
227. [Paragraph 4](#) allows for regulations to set out conditions for making payments to members.
228. [Paragraph 5](#) allows for regulations to set out the circumstances in which benefits can be assigned to other persons and any restrictions on such assignment.
229. [Paragraph 6](#) allows for regulations to set out how and when benefits can be forfeited or suspended.
230. [Paragraph 7](#) allows for regulations to set out how schemes may recover any benefits that have been overpaid.
231. [Paragraph 8](#) allows for scheme regulations to exclude double recovery of compensation or damages, including by modifying rights to compensation or damages where two sources of compensation or damages would otherwise be available for the same matter.
232. [Paragraph 9](#) allows for regulations to set out provisions for the making of contributions by employers and employees, including contribution rates. Interest may be charged on the late payment of contributions, whether by employees or employers.
233. [Paragraph 10](#) allows for regulations to set out how transfers of accrued pension “pots” will work and also any lump sum payments that can be made, in order to enable pension benefits to be transferred into, out of, or between schemes.
234. [Paragraph 11](#) allows for regulations for schemes which are funded to detail how such funds will be administered and managed, including: their investment arrangements and strategy; provisions for trustees and training; and how funds will be wound up.
235. [Paragraph 12](#) provides a non-exhaustive list of the provisions that may be included in regulations that relate to the administration and management of the scheme. The scheme manager in centrally-run schemes will be the responsible authority. In the context of locally-administered schemes such as the Local Government Pension Scheme, the scheme manager will be the administering authority, and the responsible authority may give directions or guidance to the scheme manager. Administrators may also provide or publish information.
236. [Paragraph 13](#) allows for scheme regulations to provide for the functions of the scheme manager or responsible authority to be delegated, and for further delegation of such functions.
237. [Paragraph 14](#) allows for scheme regulations to provide for employers to make payments to the scheme manager. This includes contributions to the administrative cost of the scheme and additional payments where a failure by the employer to comply with obligations under the scheme has increased those administrative costs. Interest can also be provided for under this paragraph.
238. [Paragraph 15](#) allows for regulations to set out the steps to be taken by schemes for resolving disputes and appeals. Schemes may provide for questions of law that have to be decided by the responsible authority to be determined instead by a court of law.

Schedule 4: Regulatory oversight

239. **Schedule 4** contains amendments to the Pensions Act 2004 (“the 2004 Act”), in relation to the regulatory responsibility of the Pensions Regulator for public service pension schemes.
240. **Paragraph 2** amends section 11 of the 2004 Act to require the Pensions Regulator to include in its annual report information on the exercise of the Regulator’s functions in relation to public service pension schemes. This requirement will mean that the Regulator will have to provide information publicly about how it is carrying out the new role introduced by this Act.
241. **Paragraph 3** amends section 13 of the 2004 Act:
- to allow the Pensions Regulator to issue an improvement notice by reference to a code of practice issued under new section 90A (see below); and
 - to ensure that certain provisions in this Act fall within the definition of “pensions legislation” so that improvement notices can be issued if they are breached.
242. **Paragraph 4** inserts new section 14A to allow the Pensions Regulator to appoint an appropriately skilled person to help a pension board carry out its functions. The pension board will be responsible for assisting the scheme manager in the administration and governance of the scheme. If the board is having difficulty in appropriately performing that role, expert help may be necessary. The pension board must have regard to the advice of the appropriately skilled person, and the skilled person’s costs are to be met by the scheme manager.
243. **Paragraph 5** amends section 17 to provide that the Pensions Regulator may intervene and help to recover unpaid contributions that are owed to a public service pension scheme by an employer under that scheme.
244. **Paragraphs 6, 8 and 9** make consequential amendments to sections 70, 71 and 73, inserting references to pension board members to reflect the new public service pension scheme pension board structure.
245. **Paragraph 7** inserts a new section 70A requiring the scheme manager of a public service pension scheme to notify the Pensions Regulator of an employer’s failure to pay pensions contributions on time if that failure is likely to be something that the Pensions Regulator would consider to be materially significant to the Regulator in the exercise of its functions (for example, in considering whether the employer is fulfilling its obligations and being satisfied that the scheme is being managed properly). Failure to report can lead to a civil penalty.
246. **Paragraph 10** adds record keeping (as required by section 16 of the Act) to the list of provisions in section 73 of the 2004 Act, in respect of which the Pensions Regulator may enter premises to investigate compliance.
247. **Paragraph 11** amends section 89 of the 2004 Act, requiring the Regulator to notify the scheme manager before making a report under that section in respect of a public service pension scheme. This requirement will mean that the scheme manager is aware that the Regulator intends to issue a report about the scheme and can choose to take remedial action in advance if they wish. The scheme manager cannot prevent the Regulator from issuing a report. **Paragraph 12** inserts new section 89A requiring the Regulator to report concerns to the scheme manager where the Regulator has reasonable grounds to suspect or believe that a member of the pension board has misappropriated any assets of the scheme, or has a conflict of interest in relation to the investment of assets in the scheme. Under the Act the Pensions Regulator does not have a formal role in relation to funding or investment for the funded schemes. However, in the course of undertaking oversight of administration and governance of the schemes it is possible that the Regulator may be made aware of inappropriate behaviour by a member of the pension board in relation

to the scheme assets or investments. As the scheme manager is responsible for setting up and appointing the pension board, it is appropriate that any concerns are directed to the scheme manager to address. Privilege attaches to any such report, unless it is shown that it is maliciously motivated. The section also makes clear that a conflict of interest in relation to investment of assets does not arise merely from any person being a member of the relevant scheme.

248. [Paragraph 14](#) inserts new section 90A, allowing and, in certain cases, requiring the Pensions Regulator to issue codes of practice for public service schemes. A list of matters that codes must cover is set out at new section 90A(2). The requirement to issue codes of practice is at the core of the Pensions Regulator's new role in relation to public service schemes. To help ensure schemes meet good standards of administration and governance, those involved in administering them need to know what standards they should be aiming to achieve. This section is similar to section 90 of the 2004 Act and replicates the provisions of that section regarding: revision of codes of practice; effect of failing to observe codes of practice; admissibility in evidence; the scope of codes of practice; and the procedures relating to them. The paragraph also contains a power for the Secretary of State to prescribe other matters which must be covered by codes if in the future it is considered necessary to do so.
249. [Paragraph 19](#) amends the 2004 Act by inserting a new section 248A, which places a requirement on members of the pension board to have knowledge and understanding about the scheme and the law relating to pensions and any other prescribed matters. As the pension board is responsible for assisting the scheme manager in the administration of the scheme, it is appropriate that those individuals carrying out this role should have appropriate knowledge about the scheme they are helping to run. This provision is similar to section 247 of the 2004 Act which places requirements on trustees to have knowledge and understanding about the scheme which they are running and the law relating to pensions more generally.
250. [Paragraph 21](#) amends the 2004 Act by inserting a new section 249B into that Act to place a requirement on the scheme manager of a public service pension scheme to have an adequate system of internal controls.

Schedule 5: Existing pension schemes

251. [Schedule 5](#) contains a list of powers that are used to make schemes, the provision of benefits under which is restricted by section 18 in relation to service after the closing date set by that section. The restrictions on existing schemes do not apply to the provision of injury and compensation benefits, or in certain circumstances to holders of devolved judicial office, and these are excepted from the scope of the restriction where relevant.
252. [Paragraphs 1 to 29](#) list powers to make existing schemes, and any applicable exceptions, in respect of;
- civil servants at paragraph 1;
 - the judiciary at paragraphs 2 to 15;
 - local government workers at paragraphs 16 and 17;
 - teachers at paragraph 18;
 - health service workers at paragraph 19;
 - fire and rescue workers at paragraphs 20 and 21;
 - members of police forces at paragraphs 22 and 23; and
 - the armed forces at paragraphs 24 to 29.

253. The meaning of the terms “compensation benefits” and “injury benefits” is set out in section 37. For the purposes of paragraph 29, the Schedule makes it clear that “compensation benefits” includes benefits by way of payments for resettlement or retraining.

Schedule 6: Existing injury and compensation schemes

254. [Schedule 6](#) lists powers to make existing injury or compensation schemes. Section 19 permits scheme regulations to close such schemes at a future date, subject to any exceptions provided for by the scheme regulations.
255. [Paragraphs 1 to 18](#) list the powers under which existing injury and compensation schemes are made. This covers:
- civil servants at paragraph 1;
 - the judiciary at paragraphs 2 to 4;
 - local government workers at paragraph 5;
 - teachers at paragraph 6;
 - health service workers at paragraph 7;
 - fire and rescue workers at paragraph 8;
 - members of police forces at paragraphs 9 and 10;
 - the armed forces at paragraphs 11 to 17; and
 - compensation schemes for loss of office at paragraph 18.
256. The meaning of the terms “compensation benefits” and “injury benefits” is set out in section 37. For the purposes of paragraph 16, the Schedule makes it clear that “compensation benefits” includes benefits by way of payments for resettlement or retraining.

Schedule 7: Final salary link

257. Final salary scheme pension benefits accumulated up until the date that existing schemes close by virtue of either section 18(1) or section 31(2) are to be calculated by reference to the member’s final salary at the point they retire or otherwise leave pensionable service in a new scheme (not the point at which their final salary scheme was closed). This final salary link applies to all past service in final salary schemes prior to the closing date.
258. [Paragraph 1](#) deals with a person who remains in an old scheme for their past service and becomes a member of a new scheme under section 1 or a new public body pension scheme. If their service in the old scheme and in the new scheme is continuous then, in determining the person’s final salary for the purposes of the old scheme, their service in the old scheme is to be regarded as having ended when their service in the new scheme ends, and their pensionable earnings from their new scheme service are to be regarded as derived from the old scheme service. By sub-paragraph (2), scheme regulations made under this Act may set out a distinct definition of earnings for the purposes of the final salary link. However, in doing so, the amount of earnings in the new scheme which are to be taken as pensionable earnings for the purposes of the final salary link cannot be materially less than the earnings that would have been the person’s pensionable earnings had service in the new scheme been old scheme service (sub-paragraph (3)).
259. [Paragraph 2](#) makes the same provision in the case of a person who moves to a different public service pension scheme (such as a move from the NHS Pension Scheme into the Local Government Pension Scheme) when the old scheme is closed, and whose benefits under their original old scheme are transferred to their new employer’s old scheme.

By sub-paragraph (2), scheme regulations made under this Act may set out a distinct definition of pensionable earnings for the purposes of the final salary link. However, in doing so, the amount of earnings in the new scheme which are to be taken as pensionable earnings for the purposes of the final salary link cannot be materially less than the earnings that would have been the person's pensionable earnings had service in the new scheme been deemed transfer scheme service (sub-paragraph (3)). Sub-paragraph (4) provides that in paragraph 2 a transfer of rights from one old scheme to another includes the making of a transfer payment in respect of such rights.

260. The different existing schemes determine final salary in different ways. However, taking the Classic section of the Principal Civil Service Pension Scheme ("PCSPS") as an example, "pensionable earnings" essentially means the highest of the last three years of reckonable service (to determine what someone's final salary is in PCSPS Classic it is necessary to consider the level of their salary during the last three years of their reckonable service). This is why paragraph 1 provides that in determining the person's final salary for the purposes of the old scheme, the old scheme service is to be regarded as having ended when the new scheme service ends, and such earnings derived from the new scheme (as the scheme regulations may specify) are to be regarded as derived from the old scheme service. Paragraph 2 makes similar provision in respect of determining a person's final salary for the purposes of the transfer scheme.
261. The service which is treated as pensionable for the purposes of the old scheme may include service transferred into the old scheme (including service in the private sector transferred into the old scheme under the Fair Deal). Such service will count as "old scheme service" within the meaning of paragraphs 1 and 2. These paragraphs deliver the final salary link for those who transfer service into the old scheme under the Fair Deal.
262. [Paragraph 3](#) sets out what is meant by continuous service in paragraphs 1 and 2. Any period when the person was in pensionable service in another public service or new public body scheme, and any gap in pensionable service that does not exceed five years in length, is to be disregarded, and in such circumstances service is to be considered continuous.
263. [Paragraph 4](#) makes it clear that if the person had periods of service with two or more different new schemes under section 1 or a new public body pension scheme, pensionable service with the last of those schemes is to be taken into account when calculating the member's final salary under paragraphs 1 or 2.
264. [Paragraph 5](#) allows scheme regulations to provide that a pension that is in payment under an existing public service or public body pension scheme cannot be recalculated by reference to Schedule 7 following a subsequent period of public service employment. Sub-paragraph (2) would allow such provision to be made by amending the relevant existing scheme.
265. This Schedule sets the minimum level of final salary link that applies to all the schemes closed under section 18(1) or section 31(2). However, it is not exhaustive and scheme regulations can (subject to the consent requirements in section 3) make provision for the final salary link to apply in additional circumstances, as long as this is not inconsistent with what is said in the Schedule.

Schedule 8: Consequential and minor amendments

266. [Schedule 8](#) contains minor and consequential amendments to primary legislation.
267. Many of the amendments in this Schedule annotate powers to make pension or other benefit schemes, where applicable, to note that they are subject to the restrictions placed on the use of those powers by sections 18 and 19 (restrictions on benefits provided under existing schemes). They are not commented on further in these notes.

Paragraphs 4 and 5: Pensions (Increase) Act 1971

268. Paragraph 4 amends the Pensions (Increase) Act 1971 to clarify how the uprating provisions in that Act operate on public service pensions that are either protected by the final salary link in Schedule 7 or are career average schemes to which the restrictions in sections 18(1) or 31(2) apply.
269. Paragraph 5 adds pensions made under the Act to the list of official pensions in Schedule 2 of the Pensions (Increase) Act 1971. The effect is to provide for the annual uprating of deferred pensions and pensions in payment under the mechanism which that Act provides.

Paragraph 13: House of Commons (Administration) Act 1978

270. This paragraph contains an amendment to allow members of the House of Commons Staff Pension Scheme to join the civil service pension scheme.

Paragraph 15: Local Government and Housing Act 1989

271. This paragraph amends the Local Government and Housing Act 1989 to provide that where the scheme manager is a committee of the local administering authority, and that committee is also the pension board, members of the board will all be entitled to vote in proceedings of the committee.

Paragraphs 18 to 20: Pension Schemes Act 1993

272. These paragraphs amend the Pension Schemes Act 1993, in respect of schemes made under section 1, to allow a deferred pension age that is linked to state pension age (see section 10) to be greater than 65.

Paragraph 21: Merchant Shipping Act 1995

273. This paragraph makes a consequential amendment to allow a transfer of pension rights already accrued under the pension schemes run by the three General Lighthouse Authorities. The amendment enables this by allowing payments to be made out of the General Lighthouse Fund which can include a bulk transfer of pension rights.

Paragraph 26: Human Rights Act 1998

274. This paragraph makes a consequential amendment to enable UK judges of the European Court of Human Rights to continue membership of a pension scheme established under the Act when they are appointed to the European Court.

Paragraph 29: Constitutional Reform Act 2005

275. This paragraph relates to the Lord Chancellor's function in making a scheme for members of the judiciary under section 1 of the Act. It makes this a protected function which cannot be removed from the Lord Chancellor via machinery of government changes (as the Lord Chancellor has the lead responsibility in government for maintaining the constitutional position of the judiciary).

Paragraph 30: Parliament (Joint Departments) Act 2007

276. This paragraph contains an amendment to allow members of the House of Commons Staff Pension Scheme to join the civil service pension scheme.

Paragraph 31: Legal Aid, Sentencing and Punishment of Offenders Act 2012

277. This paragraph enables active and deferred members of the Legal Services Commission who transfer into the Principal Civil Service Pension Scheme on 1 April 2013 and were within 10 and 13.5 years of their pension age on 1 April 2012 to be eligible for

the transitional protection available to other staff in the receiving scheme by virtue of section 18 (5) and (7).

Schedule 9: Existing schemes for civil servants: extension of access

278. **Schedule 9** amends the Superannuation Act 1972 to extend access to the schemes under that Act which provide for superannuation benefits for civil servants.
279. Currently, admission to the Principal Civil Service Pension Scheme (PCSPS) and other schemes made under section 1 of the Superannuation Act 1972 is restricted to those in employment in the civil service or those in an employment or office listed in Schedule 1 to that Act. Restrictive criteria apply to adding employments or offices to Schedule 1 to the 1972 Act. Members of the PCSPS who are compulsorily transferred out of the civil service to an independent provider of public services are therefore not able to retain membership (instead the current Government Fair Deal policy applies, requiring the new employer to provide a broadly comparable pension and advantageous bulk transfer terms).
280. The current Fair Deal policy is due to be amended to allow people under the above circumstances to retain access to their public service pension before the new schemes are introduced. Due to the restrictions on access to the PCSPS, the new Fair Deal policy could not apply without a change to the primary legislation. Schedule 9 aims to make this change to allow access to people who are not currently entitled to access under the 1972 Act. The Schedule will come into force on Royal Assent, to ensure that the new Fair Deal policy can be implemented in relation to the PCSPS with immediate effect. Any delay may mean that staff who are being moved out of the civil service could miss the opportunity to remain in their current pension arrangements and may affect the Government's ability to deliver improvements to public service delivery.
281. New subsection (4A) for section 1 of the 1972 Act provides that the section will also apply to persons serving in an employment or office specified under new section 1A of the 1972 Act.
282. **Paragraph 3** inserts new section 1A which gives the Minister for the Civil Service the power to specify employments and offices for the purposes of the new section 1(4A) of the 1972 Act.
283. New section 1A(1) provides that the Minister may specify in a list the employments and offices which will qualify persons for admission to a scheme by virtue of new section 1(4A). An employment or office may be specified only if subsection (2), (3) or (4) of section 1A is satisfied.
284. Subsection (2) applies where staff are transferred to a new employer after these provisions come into force, and so would otherwise cease to be entitled to membership of the PCSPS. If persons serving in that office or employment would have been eligible to be members of the scheme on the point of transfer, the Minister can specify the office or employment for the purposes of new section 1(4A); the staff will then be entitled to retain access to the scheme.
285. Subsection (3) applies where staff were transferred to a new employer before the provisions come into force and have ceased to be members, or to be entitled to membership, of the PCSPS. If persons serving in that office or employment would have been eligible to be members of the scheme before the transfer then the Minister can specify the employment or office for the purposes of section 1(4A); the staff will then be entitled to regain access to the scheme.
286. Subsection (4) allows the Minister to specify an employment or an office in particular cases where he determines that it is appropriate to do so and the employment or office comes within a description set out in regulations. The general principle is that access under these provisions is for individuals who were entitled to access to the PCSPS at the point when they are moved to a new employer. The intention is that subsection (4) will

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only be used in exceptional cases as circumscribed by the descriptions in the regulations and the determination of the Minister.

287. Subsection (5) will allow access to be granted by virtue of subsection (4) with retrospective effect. This provision will allow the scheme to deal with historic anomalies.
288. Subsection (6) requires the list of employments and offices which qualify persons for access to the PCSPS (and any amendments to the list) to be published. Regulations made by the Minister for the Civil Service under subsection (7) will set out the information that the published list must contain. It is intended that this will include: details of the employments and offices specified; the name of the employers; the dates from which access through this route is granted; and the circumstances that must exist for access to continue.
289. Those who gain access to the PCSPS through this route will move into the new schemes once they are established under the Act and the closing date as set out in section 18 has passed (as for other members, except for those who are protected by transitional provisions). In the new schemes, access will be extended where required under the procedure in section 25.

Schedule 10: Public bodies whose pension schemes must be restricted

290. Section 31 provides that those public authorities which have made a defined benefits pension scheme in respect of staff of a body or the holder of an office that is listed in Schedule 10 must not provide benefits in relation to future service after a date determined by the authority.
291. Schedule 10 lists the public authorities (non-departmental public bodies, arms length bodies and similar bodies and offices) that must close their defined benefits schemes to future accruals. Members of those schemes will either join one of the reformed public service schemes set up under section 1 or a new scheme established under section 31(7).

Schedule 11: Prime Minister, Lord Chancellor and Common Speaker

292. Paragraph 1 amends the Constitutional Reform and Governance Act 2010:
- (a) to remove the current exclusions that apply in respect of payment from the Parliamentary Contributory Pension Fund¹ under the MPs' and Ministerial pension schemes to holders of the great offices of state (paragraph 1(2) and (3)(b));
 - (b) to allow the holders of the great offices of state to become members of the Ministerial pension scheme (paragraph 1(3)(a)).
293. Paragraph 2 amends section 4 of the Ministerial and other Pensions and Salaries Act 1991, to enable severance payments under this section to be paid to the holders of the great offices of state.
294. Paragraph 3 amends the Ministerial and other Salaries Act 1975 to regularise the salary level of future Lord Chancellors in line with the salary of a Secretary of State. This will ensure that the pension entitlements of future Lord Chancellors under the Parliamentary Contributory Pension Fund are based on the appropriate salary level.
295. Paragraphs 4 to 6 close the existing arrangements that govern pensions for and in respect of the great offices of state.
296. Paragraph 8(1) makes clear that the changes being made relate to the pension provision of future holders of the great offices of state and do not remove the entitlement of those who have held this office (or their dependants) prior to the commencement of these

¹ This is the pension fund that pays out pensions to MPs, Ministers and other office holders in Parliament.

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provisions. This means that the entitlement of current and former Prime Ministers, Lord Chancellors and Commons Speakers to benefits is unchanged.

297. [Paragraph 8\(2\)](#) allows for any person appointed as Lord Chancellor between 4th September 2012 and the day on which section 33 comes into force to build up benefits in the Parliamentary Contributory Pension Fund once they cease to hold that office. This will allow Lord Chancellors who have signed a waiver (setting aside their entitlements to the current generous pension arrangements for Lord Chancellors) to participate in a tax-registered pension scheme for the remainder of their Parliamentary career, rather than in the special arrangements under the Consolidated Fund.
298. These changes will have financial implications. Currently, the pension entitlements of the great offices of state are met through the Consolidated Fund and those benefits already earned under the current arrangements will continue to be paid from the Consolidated Fund to current and former holders of great offices of state. This includes those holders of the great offices of state who have chosen to sign a waiver to their entitlements and receive benefits comparable with those provided under the Ministerial Pension Scheme. In future the employing departments of holders of the great offices of state will pay employer contributions from departmental resources and the holders of the great offices will also pay member contributions as set out in the Ministerial Pension Scheme rules.