

*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

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### *Final*

#### ***Section 36: Financial provision***

This section provides that any expenditure for the provision of pensions or other sums payable to present or former holders of judicial office are to be paid out of money provided by the Assembly.

#### ***Section 37: Commencement***

This section provides when and how the provisions of the Act are to come into force. 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 (Northern Ireland) in section 29 and Schedule 9, the provision with respect to police pensions in section 30, and the general and final provisions in sections 34 to 38.

By subsection (2), the remaining provisions are to be brought into force on such day or days as appointed by the Department of Finance and Personnel 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***

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***

This Schedule lists the Northern Ireland departments which 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***

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.

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).

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.

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.

Paragraph 4 allows for regulations to set out conditions for making payments to members.

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.

Paragraph 6 allows for regulations to set out how and when benefits can be forfeited or suspended.

Paragraph 7 allows for regulations to set out how schemes may recover any benefits that have been overpaid.

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.

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.

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.

Paragraph 11 allows for regulations for schemes which are funded to detail how such funds will be administered and managed, and how funds will be wound up.

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.

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.

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.

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***

Schedule 4 contains amendments to the Pensions (Northern Ireland) Order 2005 (“the 2005 Order”), in relation to the regulatory responsibility of the Pensions Regulator for public service pension schemes.

Paragraph 2 adds definitions to Article 2 of the 2005 Order.

Paragraph 3 amends Article 9 of the 2005 Order to allow the Pensions Regulator to issue an improvement notice by reference to a code of practice issued under new Article 85A (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.

Paragraph 4 inserts new Article 10A 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.

Paragraph 5 amends Article 13 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.

Paragraphs 6, 8 and 9 make consequential amendments to Articles 65, 66 and 68, inserting references to pension board members to reflect the new public service pension scheme pension board structure.

Paragraph 7 inserts a new Article 65A 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.

Paragraph 10 amends Article 68 of the 2005 Order to add record keeping to the list of provisions in respect of which the Pensions Regulator may enter premises to investigate compliance.

Paragraph 11 amends Article 84 of the 2005 Order, requiring the Regulator to notify the scheme manager before making a report under that Article 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 Article 84A 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 Order 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 Article 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.

Paragraph 14 inserts new Article 85A, 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 Article 85A(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 Article is similar to Article 85 of the 2005 Order and replicates the provisions of that Article 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 Department for Social Development to prescribe other matters which must be covered by codes if in the future it is considered necessary to do so.

Paragraphs 15, 16, 17 and 18 apply to public service pension schemes provisions of the 2005 Order which relate to codes of practice, power to appoint a skilled person and requirements about winding up.

Paragraph 19 amends the 2005 Order by inserting a new Article 225A, 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 Article 224 of the 2005 order 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.

Paragraph 20 amends Article 226A of the 2005 Order and paragraph 21 inserts a new Article 226B 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***

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 and these are excepted from the scope of the restriction where relevant.

Paragraphs 1 to 7 list powers to make existing schemes, and any applicable exceptions, in respect of:

- civil servants at paragraph 1;
- the devolved judiciary at paragraphs 2;
- local government workers at paragraph 3;
- teachers at paragraph 4;
- health service workers at paragraph 5;
- fire and rescue workers at paragraph 6;
- members of the police service at paragraph 7;

The meaning of the terms “compensation benefits” and “injury benefits” is set out in section 34.

#### ***Schedule 6: Existing injury and compensation schemes***

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.

Paragraphs 1 to 7 list the powers under which existing injury and compensation schemes are made. This covers:

- civil servants at paragraph 1;
- local government workers at paragraph 2;
- teachers at paragraph 3;
- health service workers at paragraph 4;
- fire and rescue workers at paragraph 5;
- members of the police service at paragraph 6; and
- compensation schemes for loss of office at paragraph 7.

The meaning of the terms “compensation benefits” and “injury benefits” is set out in section 34.

### ***Schedule 7: Final salary link***

Final salary scheme pension benefits accumulated up until the date that existing schemes close by virtue of either section 18(1) or section 32(1) 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.

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)).

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 Health and Social Care Pension Scheme into the Local Government Pension Scheme (Northern Ireland)) when the old scheme is closed, and whose benefits under their original old scheme are transferred to their new employer’s old scheme. By subparagraph (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.

The different existing schemes determine final salary in different ways. However, taking the Classic section of the Principal Civil Service Pension Scheme (Northern Ireland) ("PCSPS(NI)") 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(NI) 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.

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 policy). 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 policy.

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.

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.

Paragraph 5 allow 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. Subparagraph (2) would allow such provision to be made by amending the relevant existing scheme.

This Schedule sets the minimum level of final salary link that applies to all the schemes closed under section 18(1) or section 32(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***

Schedule 8 contains minor and consequential amendments to primary legislation. 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.

#### **Lands Tribunal and Compensation Act (Northern Ireland) 1964**

Paragraph 1 replaces subsection (5A) in section 2 of the Lands Tribunal and Compensation Act (Northern Ireland) 1964, so as to exclude from superannuation under subsection (5) of that section, a person to whom a pension is payable under a scheme under section 1 of this Act.

#### **Pensions (Increase) Act (Northern Ireland) 1971**

Paragraph 2 amends section 8 of 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 32(2) apply.

Paragraph 3 to 9 add pensions made under the Act to the list of official pensions in Schedule 2 to the Pensions (Increase) Act (Northern Ireland) 1971. The effect is to provide for the annual uprating of deferred pensions and pensions in payment under the mechanism which that Act provides.

#### **Pension Schemes (Northern Ireland) Act 1993**

Paragraphs 19 to 21 amend the Pension Schemes (Northern Ireland) 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.

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

Schedule 9 amends the Superannuation (Northern Ireland) Order 1972 to extend access to the schemes under that Order which provide for superannuation benefits for civil servants.

Currently, admission to the Principal Civil Service Pension Scheme (Northern Ireland) (PCSPS(NI)) and other schemes made under Article 1 of the Superannuation (Northern Ireland) Order 1972 is restricted to those in employment in the civil service or those in an employment or office listed in Schedule 1 to that Order. Restrictive criteria apply to adding employments or offices to Schedule 1 to the 1972 Order. Members of the PCSPS(NI) 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 Fair Deal policy applies).

Until recently the Fair Deal policy required the new employer to provide a broadly comparable pension and advantageous bulk transfer terms. The Fair Deal policy was amended in October 2013 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(NI), the revised 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 Order. The Schedule comes into force from Royal Assent, to ensure that the new Fair Deal policy can be implemented in relation to the PCSPS(NI) with immediate effect.

New paragraph (3A) of Article 3 of the 1972 Order provides that the Article will also apply to persons serving in an employment or office specified under new Article 3A of the 1972 Order.

Paragraph 3 inserts new Article 3A which gives the Department of Finance and Personnel the power to specify employments and offices for the purposes of the new 3(3A) Article of the 1972 Order.

New Article 3A(1) provides that the Department of Finance and Personnel may specify in a list the employments and offices which will qualify persons for admission to a scheme by virtue of new Article 3(3A). An employment or office may be specified only if paragraph (2), (3) or (4) of Article 3A is satisfied.

Paragraph (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(NI). If persons serving in that office or employment would have been eligible to be members of the scheme on the point of transfer, the Department of Finance and Personnel can specify the office or employment for the purposes of new Article 3(3A); the staff will then be entitled to retain access to the scheme.

Paragraph (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(NI). If persons serving in that office or employment would have been eligible to be members of the scheme before the transfer then the Department of Finance and Personnel can specify the employment or office for the purposes of Article 3(3A); the staff will then be entitled to regain access to the scheme.

Paragraph (4) allows the Department of Finance and Personnel to specify an employment or an office in particular cases where it 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(NI) at the point when they are moved to a new employer. The intention is that paragraph (4) will

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

Paragraph (5) will allow access to be granted by virtue of paragraph (4) with retrospective effect. This provision will allow the scheme to deal with historic anomalies.

Paragraph (6) requires the list of employments and offices which qualify persons for access to the PCSPS(NI) (and any amendments to the list) to be published.

Regulations made by the Department of Finance and Personnel under paragraph (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.

Those who gain access to the PCSPS(NI) 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.