

EXPLANATORY MEMORANDUM
TO THE
POLICE PENSIONS (REMEDIAL SERVICE) REGULATIONS (NORTHERN IRELAND)
2023
SR 2023 No. 122

1. Introduction

1.1 This Explanatory Memorandum has been prepared by the Department of Justice to accompany the Statutory Rule (detailed above) which has been laid before the Northern Ireland Assembly.

1.2 The Statutory Rule is made under sections 1(1), (2)(g), 2(1) (together with paragraph 7 of Schedule 2) and 3(1), 2(a) (together with paragraph 13 of Schedule 3) and (c) and (3) of the Public Service Pensions Act (Northern Ireland) 2014⁽¹⁾ (“the 2014 Act”) and sections 5(1) and (5), 6(1), 7(3), 8(1) and (3), 10(1), 11(1) and (5), 12(1) and (3), 18(1) to (3), (5), (6) and (8), 19(1), (4) and (5), 20(1), (4) and (5), 21, 22(1) and (6), 24(1), 25(1) and (4), 26(1) and (2), 29(1), (7) and (8) and 31(2) and (3) of the Public Service Pensions and Judicial Offices Act 2022 (“PSPJOA 2022”)⁽²⁾.

1.3 To the extent required by section 27 of PSPJOA 2022, these Regulations are made in accordance with Treasury directions made under that section ⁽³⁾.

1.4 This rule is subject to the negative resolution procedure in the Assembly and is due to come into operation on 1 October 2023.

2. Purpose of the Instrument

2.1 These Regulations amend the Police Pensions Regulations (Northern Ireland) 2015⁽⁴⁾ (“2015 Regulations”) in consequence of provisions made by PSPJOA 2022 and ensure that the retrospective part of the McCloud Judgment remedy can be implemented by: -

- amending scheme rules to remove the effect of the discriminatory measures applied between 1 April 2015 and 31 March 2022 (the remedy period),
- providing eligible members with a choice as to which set of pension benefits they wish to elect for the remedy period; legacy (final salary) or reformed (career average) scheme benefits from 1 October 2023, and
- outlining options on how contributions owed may be collected or returned to the member.

3. Policy Background

3.1 In 2011, the Westminster Government accepted the recommendations of Lord Hutton’s report on public service pension reform. In March 2012, the Northern Ireland

⁽¹⁾ 2014 c. 2 (N.I.). Section 3(1) was amended by section 94(2) of the Public Service Pensions and Judicial Offices Act 2022, and section 3(2) was inserted by section 94(3) of that Act.

⁽²⁾ 2022 c. 7.

⁽³⁾ See section 38 of PSPJOA 2022 for the meaning of “Treasury directions”, which includes directions given by the Department of Finance. The Public Service Pensions (Exercise of Powers, Compensation and Information) Directions (Northern Ireland) 2023 were published on 26 January 2023 and are accessible online at <https://www.finance-ni.gov.uk/publications/directions-made-under-public-service-pensions-and-judicial-offices-act-2022>.

⁽⁴⁾ S.R. 2015 No. 113.

Executive agreed to mirror this reform and not to adopt a different approach for Northern Ireland schemes.

3.2 In 2015, across the United Kingdom, the career average reforms were applied to all public service pension schemes (including the police scheme). However, following consultation with staff associations, transitional protection arrangements were agreed to allow certain older members to remain in their pre-2015 legacy pension schemes while other members were moved into the reformed scheme on 1 April 2015.

3.3 However, in 2018, the Department of Finance advised the Department of Justice of a legal ruling in England and Wales (the McCloud judgment). This ruling found that the transitional protection arrangements gave rise to unlawful age discrimination against younger members in the judicial pension scheme and therefore must be remedied. This is known as the McCloud Remedy.

3.4 In 2019 the Westminster government accepted that public service pension schemes with comparable transitional arrangements would also require a similar solution. DoF confirmed that this extended to the NI devolved pension schemes.

3.5 PSPJOA 2022 sets out the framework for the delivery of the McCloud Remedy and was introduced to the House of Lords on 19 July 2021. On 1 November 2021, the Northern Ireland Assembly passed a Legislative Consent Motion to support this Act. PSPJOA 2022 achieved Royal Assent on the 10 March 2022.

3.6 The Department introduced the prospective remedy through the [Police Pensions \(Amendment\) Regulations \(Northern Ireland\) 2022⁵](#) which came into effect from 1 April 2022. That Statutory Rule ensured the closure of the legacy schemes from future accrual on 31 March 2022 and permitted the transition of all active members to the 2015 reformed scheme for all future pensionable service from 1 April 2022.

4. Consultation

4.1 As required by section 21 of the 2014 Act, the Department of Justice has consulted the Northern Ireland Policing Board, the Police Association of Northern Ireland, the Northern Ireland Retired Police Officers Association and the Chief Constable of the Police Service of Northern Ireland. Also consulted were the Scheme Advisory Boards for both Northern Ireland and England and Wales.

4.2 In accordance with section 3(5) of that Act the Department of Justice has obtained the consent of the Department of Finance.

4.3 The draft regulations were issued for consultation from 16 March 2023 to 7 June 2023.

5. Equality Impact

5.1. Consideration has been given to compliance with section 75 of the Northern Ireland Act 1988 and no significant implications for equality issues have been identified by the Department.

6. Regulatory Impact

6.1 The Department does not consider that there is a need for a regulatory impact assessment for this instrument as it has no impact on businesses, charities or voluntary bodies.

⁵ S.R. 2022 No. 148.

7. Financial Implications

7.1 The estimated cost of the McCloud Remedy to the NI Police Scheme is £141M. This is the cost based on the expected improvement to member benefits returning to their respective legacy scheme.

7.2 Any delay may be repercussive and also risks legal challenge from other UK government departments/schemes.

8. Section 24 of the Northern Ireland Act 1998

8.1 The proposed Rules are considered compatible with section 24 of the Northern Ireland Act 1998

9. EU Implications

9.1 Not applicable

10. Parity or Replicatory Measures

10.1 Similar legislation will come into operation on 1 October 2023 simultaneously in Scotland, England and Wales.

11. Additional Information

11.1 These regulations are made to support the second and final stage of McCloud Remedy by providing the Police Pension Scheme with the appropriate legislative provision to make retrospective changes to eligible member pension benefits.