

EXPLANATORY MEMORANDUM TO

The Firefighters' Pensions (Remediable Service) Regulations (Northern Ireland) 2023

SR 2023 No. 133

1. Introduction

- 1.1. This Explanatory Memorandum has been prepared by the Department of Health, to accompany the Statutory Rule (detailed above) which is laid before the Northern Ireland Assembly.
- 1.2. The Statutory Rule is made under powers conferred by sections 1(1) and (2)(f), 2(1) and 3(1) and (2)(a) (together with paragraph 13 of Schedule 3) and (c) and (3) of and paragraph 6 of Schedule 2 to the Public Service Pensions Act (Northern Ireland) 2014 (“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), (2) 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. Purpose

- 2.1. The Statutory Rule makes provision in respect of pensions payable to firefighters in Northern Ireland. The purpose is to remedy the discrimination that arose due to certain transitional arrangements put in place when public service pension schemes were reformed between 2014 and 2016. It enables the second phase of the McCloud remedy, known as the ‘retrospective remedy’, of the firefighters’ pension scheme, as set out in the PSPJOA 2022.
- 2.2. The PSPJOA 2022 sets out the framework for remedying the unlawful age discrimination that was found to result from the transitional protections contained in the reformed public service pension schemes introduced in 2015, conferring powers to make scheme regulations.
- 2.3. This Statutory Rule, made under the powers in the PSPJOA 2022 and in accordance with Department of Finance Directions made under that Act, contains the “retrospective” element of the remedy in respect of the firefighters’ pension schemes.
- 2.4. The Firefighters’ Pension Schemes (Amendment) Regulations (Northern Ireland) 2022 (SR 2022 No. 155) set out the “prospective” element of the remedy, closing the legacy firefighters’ pension schemes to the accrual of pension benefits on and after 1 April 2022.

3. Background and summary of proposals

- 3.1. This Department has policy responsibility for Firefighters' pensions, which are administered by the Northern Ireland Fire and Rescue Service (NIFRS). Firefighters' pensions have, in line with other public sector pension schemes in Northern Ireland, operated on the basis of parity with their counterparts in England, Scotland and Wales.
- 3.2. Public service pension schemes in Northern Ireland were reformed in April 2015 in line with reforms made to the schemes in the rest of the United Kingdom at that time. As part of these changes those within 10 years of normal pension age as at 31 March 2015 remained in their legacy pension schemes, while other, usually younger, members had to move into the new reformed schemes.
- 3.3. In December 2018, the Court of Appeal found that these transitional arrangements gave rise to unlawful age discrimination, as this transitional protection was only offered to older scheme members. In 2019 the UK Government acknowledged that this judgment had implications for all of the public service pension schemes which had implemented similar transitional arrangements. Legal advice confirmed that the identical transitional measures introduced for equivalent devolved schemes must be similarly remedied.
- 3.4. On 19 August 2020, the Department of Finance (DoF) launched a public service pension schemes consultation on options to remedy the discrimination, and also measures to bring the ongoing discrimination to an end. The consultation set out two proposed options (immediate choice or deferred choice) for retrospectively removing the discrimination suffered by members who were not eligible for transitional protection due to their age and proposed that the legacy schemes would be closed to all members on 31 March 2022. In February 2021, DoF published its response to that consultation, setting out that the deferred choice was more appropriate as members would be aware of their personal circumstances at this time and in a better position to make the decision.
- 3.5. The PSPJOA 2022 provides for the remedy set out above, which is designed to address the discrimination identified by the courts and ensure that all scheme members will be treated in the same manner for any future service accrued on or after 1 April 2022. The PSPJOA 2022 closed all legacy public service pension schemes to future accrual from 1 April 2022.

4. Consultation

- 4.1. The Department ran a statutory consultation between 26 April 2023 and 21 June 2023 seeking views on the changes being made to implement the retrospective remedy and draft version of the provisions to the regulations needed to enact the second phase of the remedy as set out in the PSPJOA 2022.

- 4.2. A copy of the consultation document and a summary of responses can be found on the DHSSPS website.

[Consultation on Northern Ireland Firefighters' Pension Scheme Retrospective Remedy | Department of Health \(health-ni.gov.uk\)](#)

5. Equality Impact

- 5.1. The McCloud remedy is designed to remedy age discrimination. The Statutory Rule has been considered under Section 75 of the NI Act 1998 and fully complies with the legislation with no adverse impact on any of the Section 75 Groups. There are no Human Rights or rural needs implications.

6. Regulatory Impact

- 6.1. A Regulatory Impact Assessment has not been completed for this Statutory Rule as it has no impact on businesses, charities or the voluntary sector.

7. Financial Implications

- 7.1. McCloud remedy costs were included in the schemes 2016 actuarial valuation. HMT have indicated that compensation payments linked to the remedy should be treated as annually managed expenditure (AME). This applies to all types of corrective payments and compensation payable under the PSPJOA 2022 and will include corrections to pension benefits, contributions and interest, corrective payments for overpaid tax and compensation for financial losses.

8. Section 24 of the Northern Ireland Act 1998

- 8.1. It is the view of the Department that this Order is compatible with section 24 of the Northern Ireland Act 1998.

9. EU Implications

- 9.1. Not applicable

10. Parity or Replicatory Measure

- 10.1. This Regulation will ensure Northern Ireland maintains parity with their counterparts in England, Scotland and Wales.