

EXPLANATORY MEMORANDUM
TO THE
POLICE PENSIONS (AMENDMENT) REGULATIONS (NORTHERN IRELAND) 2024
SR 2024 No. 38

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 25(2)(k) and 26(2)(g) of the Police (Northern Ireland) Act 1998¹ (“the 1998 Act”), Articles 14 and 15 of the Superannuation (Northern Ireland) Order 1972² and sections 1(1), (2)(g), 2(1) (together with paragraph 7 of Schedule 2) and 3(1) to (3) (together with Schedule 3) of the Public Service Pensions Act (Northern Ireland) 2014³ (“the 2014 Act”).

1.3 This rule is subject to the negative resolution procedure in the Assembly and is due to come into operation on 1 April 2024.

2. Purpose of the Instrument

2.1 The purpose of these Regulations is to:

- remove the risk of legal challenge for disability discrimination relating to Ill-Health exclusion benefits following a concession made by the Home Secretary regarding such a legal challenge in the equivalent England and Wales Police Pension scheme;
- introduce a revised employer contribution rate as a consequence of the 2020 Police Pension Valuation;
- amend the regulations relating the forfeiture of a beneficiary’s pension within the Royal Ulster Constabulary Pensions Regulations 1988 (the 1988 Regulations) and the Police Pension (Northern Ireland) Regulations 2009 (the 2009 Regulations) in order to align with those provisions within the scheme established by the Police Pensions Regulations (Northern Ireland) 2015 (the 2015 scheme); and
- apply technical amendments to correct minor drafting errors in the 2015 scheme, including alignment with similar changes in the Police Pension 2015 Scheme in England and Wales.

(1) 1998 c.32. Sections 25 and 26 were amended by section 78(1) of, and paragraph 23 of Schedule 6 to, the Police (Northern Ireland) Act 2000 and section 26 is amended by section 49(5) of that Act.

(2) S.I. 1972/1073 (N.I. 10).

(3) 2014 c.2 (N.I.). Section 3 of the 2014 Act was amended by section 94(11) - (14) of the Public Service Pensions and Judicial Offices Act 2022 (c.7). Section 3(3)(b) of the 2014 Act enables scheme regulations to make retrospective provision.

3. Policy Background

3.1 In February 2023, the Westminster Government conceded on a litigation case which related to restrictions on officers that were previously excluded from ill-health retirement benefits on the grounds that it contravened the non-discrimination rule in s.61 Equality Act 2010. Following this, the Home Office released Ministerial Administrative guidance to Scheme Managers in England and Wales concerning the treatment of those officers impacted and the approach in going forward. Similar guidance was also produced by the Scottish Government for their counterpart scheme.

3.2 Due to the interoperability of the Police Pension Schemes, it was agreed as part of a UK wide Jurisdictional approach to remove the discrimination from the scheme in two-phases-

- (i) amend scheme regulations to remove perceived disability discrimination and ensure equality treatment of for all scheme members; and
- (ii) provide a retrospective remedy for officers impacted prior to 1 April 2024.

3.3 In the absence of the Assembly, and following the issue of Ministerial Administrative guidance to the removal of the ill health eligibility restrictions in GB police schemes (following the Home Secretary's concession in a employment tribunal on the issue), the Department sought legal advice as to Northern Ireland's position. On 26 May 2023, the Permanent Secretary agreed to bring forward a set of regulatory amendments which from 1 April 2024 remove the ill health exclusion clauses relating to ill health retirement in the 2015 Scheme. All scheme members now pay the full employee pension contribution rate from 1 April 2024. However, while all active members will now be eligible to apply for ill health retirement from 1 April 2024, this will be based solely upon the period for which the member has paid a full contribution rate under SR 2015/113 (regulation 169).

3.4 In accordance with Section 11 of the 2014 Act, the Regulations also amend the employer contribution rate to reflect the 2020 Valuation, to ensure that the 2015 scheme remains sustainable in the long term.

3.5 The Regulations also make a number of technical amendments to improve the operation of the 2015 scheme.

3.6 The 1988 Regulations and the 2009 Regulations amend the forfeiture of a beneficiary's pension to align with the existing provisions within the 2015 scheme.

4. Consultation

4.1 In accordance with section 26(6) of the 1998 Act and section 22 of the 2014 Act, the Department of Justice has issued a report to the Northern Ireland Assembly relating to a change to a protected element of the scheme. It has also consulted the Police Federation for Northern Ireland, the Chief Police Officers Staff Association, the Superintendents Association for Northern Ireland, the Northern Ireland Policing Board, 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 72(2A) of the 1998 Act and section 3(5) of the 2014 Act, the Department of Finance⁽⁴⁾ has consented to the making of these Regulations.

4.3 The draft regulations were issued for consultation from 7 November 2023 to 20 December 2023. After consideration of the responses, a Departmental Consultation Response was published on the 19 January 2024.

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.

7. Financial Implications

7.1 The impact on the public sector is limited to the area of public service pensions provision. Government changes to the SCAPE discount rate, together with impacts from broader valuation results across schemes will mean increases in employer contribution costs in unfunded public service schemes from 1 April 2024.

7.2 Funding will be included in departmental budget allocations towards the increased employer pension costs across the public sector. This may not address the full level of pressures identified by departments. Any remaining pressures will be reviewed in-year.

7.3 The Government Actuary have estimated the costs of the removal of the ill-health exclusion benefit for the NI Police Pension Scheme to be 0.41% in additional employer costs in future years, should all those previously excluded from accessing the ill-health benefit provision, retire under ill-health. This may not be the case. A small benefit to the scheme will result from a small increase in employee contributions to those members who have had their ill-health exclusion benefit previously removed.

7.4 Any delay may be repercussive and 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.

⁽⁴⁾Departments Act (Northern Ireland) 2016 c.5 (N.I). Section 1(4) renamed as the Department of Finance and Personnel as the Department of Finance.

10. Parity or Replicatory Measures

10.1 As a consequence of the Government Actuary's Department 2020 Pension Scheme Valuation, most UK Public Sector Pension Schemes will be making similar legislation, to come into operation on 1 April 2024.

10.2 Police Pensions Schemes in Scotland and England and Wales also plan to make similar amendments concerning the removal of the Ill-health benefit provisions from their respective 2015 scheme.

11. Additional Information

11.1 Not applicable.