

PUBLIC SERVICE PENSIONS ACT 2013

EXPLANATORY NOTES

COMMENTARY ON SECTIONS AND SCHEDULES

Establishment of new schemes

Section 1: Schemes for persons in public service

15. This section contains the main enabling power for new public service pension schemes and schemes providing other benefits, such as injury and compensation benefits, made under this Act. The schemes are to be made in regulations, which will contain detailed provisions for the payment of pensions or other benefits. These schemes are required to be made in compliance with the framework conditions set out in the rest of the Act. *Subsection (1)* enables schemes to be established which provide pensions or other benefits to the main categories of persons in public service listed in *subsection (2)*. The definition of those main categories is further set out in Schedule 1 (to which *subsection (3)* cross-refers).
16. The detail of specific pension and other benefits schemes is to be set out in regulations. These regulations are called “scheme regulations”, as set out in *subsection (4)*.

Section 2: Responsible authority for schemes

17. *Subsection (1)* enables those persons listed in Schedule 2 to make scheme regulations for the main categories of persons in public service. The person with the power to make scheme regulations for a main category of persons in public service is described in *subsection (2)* (and in the Act as a whole) as the “responsible authority” for the scheme.

Section 3: Scheme regulations

18. **Section 3** contains additional provisions about how the power to make scheme regulations under the Act may be used.
19. Under *subsection (1)*, scheme regulations can make such provision as the responsible authority considers appropriate, provided it is in accordance with the requirements set out in the rest of the Act. For examples of sections which limit the type of provision that may be made, or which require provisions of a specific kind to be included, see:
 - section 4, which requires schemes to have a scheme manager who is to be responsible for managing or administering the scheme;
 - section 5, which requires schemes to provide for the establishment of a pension board to assist the scheme manager with certain matters;
 - section 7, which requires schemes to provide for the establishment of a scheme advisory board to advise on certain matters;
 - section 8, which sets constraints on the design of schemes, including requiring schemes that are defined benefits schemes to provide those benefits through a “career average revalued earnings scheme” (or “CARE” scheme) or such other

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

description of defined benefits scheme as the Treasury may specify in regulations (but not a final salary scheme);

- section 9, which provides for the revaluation of pensionable earnings of a person in a CARE scheme in accordance with changes in prices or earnings as set out in an annual order made by the Treasury;
 - section 10, which contains requirements relating to the normal pension age under schemes made under this Act; and
 - sections 11 and 12, which require scheme regulations to contain a mechanism for regular valuations of the scheme and to provide for a cap on the costs to employers of public service schemes.
20. The provisions which can be made include in particular, as *subsection (2)(a)* says, any matter set out in Schedule 3. This schedule sets out a non-exhaustive list of matters which can be included in scheme regulations for public service pension schemes. If a matter is not mentioned in Schedule 3 this does not prevent it from forming part of such a scheme, provided it is within the powers given by sections 1(1) and 3(1).
21. Scheme regulations may also include consequential, supplementary, incidental or transitional provisions in relation to the scheme or any provision of the Act (see *subsection (2)(b)*).
22. *Subsection (3)(a)* allows scheme regulations to make different provision for different purposes or different cases, including different provision for different descriptions of persons. This is a common provision in regulation-making powers to ensure that they are appropriately flexible. For example, it would allow schemes to be deemed ‘connected’ (under section 4(6)) for some purposes but not for others. *Subsection (3)(b)* allows scheme regulations to include provisions that have retrospective effect (in relation to a period that precedes the regulations coming into force), subject to section 23 (which sets out procedural requirements that apply to the exercise of the power to make retrospective provision). Such powers are common in public service pensions legislation. For example, it may be necessary to adjust schemes to accommodate changes in law or where the government does not want to delay the benefit of a particular change but needs time to consider the consequences and appropriate method of making the change.
23. *Subsection (3)(c)* allows scheme regulations to give persons who have functions under the regulations discretion in carrying out those functions. This permits Ministers or other scheme managers, for example, to make their own decisions within a framework set by scheme regulations.
24. *Subsection (4)* allows scheme regulations to amend primary legislation and secondary legislation for consequential purposes. Only primary legislation passed before or in the same parliamentary session as this Act can be amended. This power may be necessary where legislation is inconsistent with or requires modification as a consequence of scheme regulations or a provision of this Act. Section 24(1)(a) further requires that any amendment to primary legislation must be made by the affirmative procedure. The meaning of ‘affirmative procedure’ is given in section 38(2).
25. *Subsection (5)* provides that any scheme regulations made under powers in this Act require the Treasury’s consent, subject to the exceptions set out in *subsection (6)*. Those exceptions are:
- scheme regulations made by Scottish Ministers in respect of local government workers, fire and rescue workers and members of a police force; and
 - scheme regulations made by Welsh Ministers in respect of fire and rescue workers.

This carries forward current consent arrangements for these schemes.

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26. The Government intends to put in place appropriate arrangements to ensure that requirements for the Treasury's consent under this section, or where applicable for the Treasury's administrative approval of other spending commitments (for which see chapter 1 of *Managing Public Money* — HM Treasury, October 2007¹), are exercised in a way that balances appropriate scrutiny with administrative efficiency.

¹ http://www.hm-treasury.gov.uk/d/mpm_whole.pdf