

EXPLANATORY MEMORANDUM TO
THE PUBLIC SERVICE (CIVIL SERVANTS AND OTHERS) PENSIONS
(REMIABLE SERVICE) REGULATIONS 2023

2023 No. 942

1. Introduction

1.1 This Explanatory Memorandum has been prepared by the Cabinet Office and is laid before Parliament by Command of His Majesty.

2. Purpose of the instrument

2.1 The purpose of this instrument is to put in place new Civil Service pension scheme Regulations, to fulfil the requirements of the Public Service Pensions and Judicial Offices Act 2022 ('PSPJOA 2022'). The Regulations implement the 2015 McCloud Remedy for the 420,000 affected Civil Service Pension Scheme members. More detail is set out in sections 6 and 7 of this Explanatory Memorandum.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Extent and Territorial Application

4.1 The extent of this instrument (that is, the jurisdiction which the instrument forms part of the law of) is the United Kingdom.

4.2 The territorial application of this instrument (that is, where the instrument produces a practical effect) is the United Kingdom.

5. European Convention on Human Rights

5.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

6. Legislative Context

6.1 Between 2014 and 2016, new ('reformed') public service pension schemes were established by regulations made under the Public Service Pensions Act 2013 ('PSPA 2013'). The Public Service (Civil Servants and Others) Pensions Regulations 2014 (S.I. 2014/1964) established the reformed Civil Service scheme, 'alpha'. These Regulations are new pension scheme regulations made under the PSPA 2013 and in accordance with PSPJOA 2022.

6.2 Transitional arrangements as part of the 2014 to 2016 reforms allowed pension scheme members within 10 years of retirement to remain in their pre-existing pension ('legacy') schemes. The Civil Service legacy scheme is the Principal Civil Service Pension Scheme ('PCSPS') with the sections classic, premium (which includes classic plus) and nuvos.

6.3 In December 2018, the Court of Appeal in *Lord Chancellor and Secretary of State for Justice and another v McCloud, Secretary of State for the Home Department and*

others v Sargeant and others [2018] EWCA Civ 2844 (the ‘McCloud judgment’) found that transitional arrangements provided for in relation to the reformed judicial and firefighters’ pension schemes discriminated against younger pension scheme members, also giving rise to indirect sex and race discrimination. On 27 June 2019, the Supreme Court denied the Government permission to appeal the Court of Appeal’s judgment.

- 6.4 The Government subsequently committed to apply a remedy across all affected public service pension schemes created under the PSPA 2013, legislating to this effect with the PSPJOA 2022.
- 6.5 For the Civil Service pension scheme, the first stage of the remedy was to close the legacy sections to future accrual and place all active Civil Service pension scheme members into alpha from 1 April 2022.
- 6.6 For the second, retrospective stage of the remedy, the PSPJOA 2022 makes provision to put right the discrimination that occurred between 1 April 2015 when transitional arrangements under the PSPA 2013 first began, and 31 March 2022 (the ‘remedy period’). The PSPJOA 2022 does this by returning (‘rolling back’) members who were placed in or transitioned into alpha on or after 1 April 2015, to the legacy scheme section that members otherwise could have been placed in for their pensionable service during the remedy period (‘remediable service’).
- 6.7 This instrument provides for affected Civil Service pension scheme members to make a choice for their remediable service, between receiving legacy scheme benefits or reformed scheme benefits payable from the legacy scheme, in accordance with provisions under the PSPJOA 2022.

7. Policy background

What is being done and why?

- 7.1 On 15 July 2019, the Chief Secretary to the Treasury made a written ministerial statement setting out that the Government considered that the McCloud judgment had implications for all reformed public service pension schemes. The statement explained that the Government planned to make proposals to remedy the discrimination across all affected schemes.
- 7.2 HM Treasury carried out a public consultation in 2020 for the remedy solution and a written ministerial statement issued in 2021 set out that schemes would offer scheme members a choice between receiving legacy or reformed scheme benefits for their remediable service. The Government confirmed that legacy schemes would close on 31 March 2022 and that affected members would be given a choice of which pension benefits they wish to receive when those benefits are due to come into payment (the ‘deferred choice underpin’ or ‘DCU’ option). For members with remediable service benefits already in payment, the choice would be given as soon as possible after the necessary legislative changes were in place.
- 7.3 There is no alternative to laying regulations that can be explored to remedy the discrimination. Existing legacy and reformed scheme rules are found in regulations, so further regulations are required for this purpose. In 2022 HM Treasury laid the PSPJOA 2022, which provides the framework and legislative powers for public service pension schemes to implement the remedy, by 1 October 2023.

- 7.4 The policy objectives set out in the PSPJOA 2022 that are relevant to this instrument are:
- a) to address the discrimination that arose when public service pension schemes were closed to certain members between 2014 and 2016; and
 - b) deliver changes to public service pension schemes to ensure that all eligible public service workers have access to high quality defined benefit schemes on a fair and equal basis.
- 7.5 This instrument enables completion of the second stage of the remedy, the retrospective stage, which aims to put affected scheme members back in the position that they would have been in, had the discrimination identified in the McCloud judgment not occurred. It does this by reversing the age-discriminatory transitional protection policy that placed or transitioned younger scheme members into alpha between 1 April 2015 and 31 March 2022.
- 7.6 The policy underlying the first step of the retrospective remedy, rollback, is to give a consistent starting point for the practical application of the second step of the retrospective remedy. The second step taken forward by this instrument, effective from 1 October 2023, allows for members to choose whether they would like to receive remediable service benefits under their legacy or reformed pension scheme.
- 7.7 Remedial action may be necessary for members who built up Civil Service pension scheme benefits during the remedy period. This includes having put benefits into payment, or the completion of a relevant action that may affect the remediable service benefits they may be entitled to. Examples of relevant actions could be the purchase of added pension, transferring between schemes or the implementation of a Pension Sharing Order ('PSO').

Explanations

The Remediable Service Statement

- 7.8 This instrument provides for when and how members or their surviving beneficiaries are to be informed of the remediable service benefit choices available to them using a Remediable Service Statement ('RSS'), as required by the PSPJOA 2022. Under this instrument the Scheme Manager must provide an RSS to all members with remediable service, setting out the benefits available for the remedy period under the relevant PCSPS section and the equivalent alpha benefits. Further requirements about the content and timing for issue of the RSS are contained in the PSPJOA 2022 and the Public Service Pensions (Exercise of Powers, Compensation and Information) Directions 2022.

Decisions about the treatment of remediable service: Opted-out service elections

- 7.9 This instrument provides for members who opted out of the PCSPS to avoid joining or remaining in alpha, to apply to have their remediable service reinstated in the PCSPS. The Regulations cover the treatment of a person's opted-out service in the remedy period and set out the criteria and conditions that need to be met to reinstate the opted-out service so it may be treated as remediable service. An RSS must be issued before an opted-out service election can be made setting out the terms and conditions that apply.

Immediate choice decision for alpha or PCSPS benefits

- 7.10 The PSPJOA 2022 provides that this instrument must make provision for the Civil Service pension scheme to operate the Immediate and Deferred Choice elections for alpha equivalent benefits or PCSPS pension benefits for the remedy period. This instrument also makes provisions for the time limits for making an election and provisions for when an election is not made by a member. Default election provisions set out the circumstances when the Scheme Manager will make an election on behalf of a member including how the benefits payable will be determined.
- 7.11 This instrument includes a framework to identify an eligible decision-maker where a member has died before making their Immediate or Deferred Choice decision. In most cases that decision-maker would be the surviving adult (the member's spouse, civil partner or surviving qualifying partner). There are some circumstances where there may be multiple beneficiaries and the schedule sets out who the eligible decision-maker should be. Where no decision-maker can be agreed or identified, the Scheme Manager will become the eligible decision-maker.

Deferred choice decision for alpha or PCSPS benefits

- 7.12 This instrument includes provision for active and deferred members of the scheme to be given a Deferred Choice (at the point of retirement) to take PCSPS or alpha equivalent scheme benefits for the remedy period when they come to retire. This instrument integrates the DCU decision making process into the overall retirement process.
- 7.13 This instrument makes provision for circumstances such as where a member dies before making their decision or dies after making their decision but before benefits relating to that decision have been put into payment. The provisions allow for the payment of death benefits to be paid in line with the member's choice of scheme if a decision had been made, or where no choice has been made for an eligible decision-maker to make a choice. In both instances an RSS will be issued to an eligible decision-maker. Where the benefits are in payment the member's election can be revoked by the eligible decision-maker to make a choice that reflects the change of circumstances.
- 7.14 This instrument allows for the Scheme Manager to pay interim scheme benefits in relation to remediable service, in specific circumstances, until an RSS can be issued and a DCU decision made. This may happen where the scheme is not in possession of information from another scheme in respect of transferred in remediable service. Corrections to benefits paid will be made in accordance with the member's choice as appropriate.

Provision about divorce and dissolution arrangements

- 7.15 This instrument makes provision for the adjustment of certain non-core pension benefits after rollback. Where a member's remediable service has been used to determine the value of pension benefits for divorce or dissolution purposes the remedy could affect the implemented PSO and will need to be taken into account. This will be done automatically by the scheme administrator and the effects of the adjustments will be notified to those concerned.
- 7.16 This instrument protects the pension credit member's benefits and prevents them from being unfavourably affected by an ex-spouse's Immediate or DCU decision. Pensions created by a divorce and given to ex-spouses known as pension credit benefits are not

treated as remediable service and they have no remedy rights attached to them. This is because only members of the reformed scheme who were subject to the discrimination between 2015 and 2022 are eligible for remedy. Pension credit members are not scheme members for remedy purposes as they have not contributed to the scheme.

Member Voluntary Contributions

- 7.17 This instrument makes provision about the treatment of rights from the purchase of additional pension by member voluntary contributions, paid by lump sum or periodical contributions, which began during the remedy period. Added pension purchased in alpha will be treated as added pension as if it had always been purchased in the PCSPS, with removal of those rights from alpha. Following a member's Immediate or Deferred choice, added pension rights will follow that choice.
- 7.18 This instrument makes provision about member voluntary contribution rights to Effective Pension Age ('EPA') or Enhanced Effective Pension Age ('EEPA') purchased in alpha, to be treated as PCSPS additional pension or replaced by a refund of contributions paid in the form of compensation and the rights removed.
- 7.19 Provisions also allow members who did not have the opportunity to elect to purchase rights to EPA or EEPA in respect of remediable service to do so retrospectively, where appropriate.

Transfer of rights in or out of the scheme

- 7.20 This instrument makes provisions for the adjustment of pension rights transferred in and out of the Civil Service pension arrangements that include remediable service.
- 7.21 This instrument provides for the recalculation of cash equivalent transfer values ('CETVs') and transfers made under the Club arrangements that have taken place before 1 October 2023. The transfer Club is mainly for members transferring between broadly equivalent public service pension schemes.
- 7.22 This instrument also requires the Scheme Manager to provide an RSS to a person who has transferred rights out of the scheme in respect of remediable service. The RSS will inform the member of the higher value of the CETV that is determined from using PCSPS terms or alpha terms for their remediable service. The PSPJOA 2022 provides that the highest value must be used for members transferring out of the scheme.
- 7.23 This instrument includes provisions for the calculation or re-calculation of a transfer value and the making and accepting of additional payments in relation to the transfer value of rights secured for remediable service. Provisions allow for re-calculations of CETVs made before 1 October 2023, to allow for retrospective action to transfers that were carried out before the implementation of this instrument. This instrument also puts in place provisions for the calculation of transfer values after this instrument is in place.
- 7.24 This instrument allows for service transferred into the Civil Service pension scheme during the remedy period, to be treated as service being transferred into the PCSPS. Where a member makes a choice for alpha scheme benefits for the remedy period, regulations include provision to vary the value of the rights to be treated as alpha rights.

Other Provisions of interest

- 7.25 This instrument provides for the reassessment of ill-health retirement applications which may have been treated differently if they had originally been assessed in a member's alternative Civil Service pension scheme.
- 7.26 This instrument includes provision to protect the amount of certain child pensions in payment before 1 October 2023 from being reduced as result of the PSPJOA 2022 or these Regulations.
- 7.27 This instrument includes provisions allowing members who would, but for the transitional protection, have been able to aggregate a previous period of pensionable service in the PCSPS with current service. An aggregation of benefits option is usually required to be made within 12 months of a member re-joining the PCSPS. This provision is included to allow members this choice with their remedy choice, so they do not miss out on this option.
- 7.28 This instrument includes provisions applicable to a person who has already obtained a remedy for their remediable service. For the purposes of PSPJOA 2022 and these Regulations they are treated as if they were an Immediate Choice Member who elected to receive PCSPS benefits in relation to their remediable service.
- 7.29 This instrument makes provisions about any amounts ('relevant amounts') owed to or by a person as a result of PSPJOA 2022 or these Regulations where operation of the remedy results in an over or under payment of benefits already paid. These powers could be used where a tapered member has their mixed service benefits adjusted to either PCSPS or alpha benefits as they are not allowed to retain mixed benefits. Mixed service benefits are made up of both PCSPS and alpha service during the remedy period.
- 7.30 This instrument includes provision for where the deadline has passed for a member to make a mandatory Scheme Pays election, before they have been advised of any changes to their annual allowance position which may result in tax charges (due to the retrospective remedy). The scheme will therefore accept a voluntary Scheme Pays election.
- 7.31 This instrument will allow the Scheme Manager discretion to reduce or waive relevant amounts in certain circumstances as set out in the Public Service Pensions (Exercise of Powers, Compensation and Information) Directions 2022.

8. European Union Withdrawal and Future Relationship

- 8.1 This instrument does not relate to withdrawal from the European Union/trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

- 9.1 The Cabinet Office has no plans to consolidate the legislation at this time.

10. Consultation outcome

- 10.1 The PSPA 2013 provides that before making scheme regulations the Scheme Manager must consult such persons (or representatives of such persons) as appear to the Scheme Manager likely to be affected by them. For this instrument a public written consultation was used to reach out to a wide range of stakeholders to gather opinions on the draft proposals. The consultation ran from 6 March 2023 to 14 May 2023.

During the consultation period the Cabinet Office ran a number of engagement sessions designed to include active, deferred and pensioner members and other stakeholders to provide the opportunity to directly engage with them on the proposed regulations as set out in the consultation.

- 10.2 In March, April and May meetings were held with the National Trade Unions Committee (NTUC) affiliated unions who represent Civil Service Pension scheme members, non-affiliated member organisations and the Civil Service Pensioners Alliance.
- 10.3 The Cabinet Office received 107 responses in total from scheme members, trade unions and other member representative groups which in some way addressed the consultation questions. These consisted of 102 responses from individuals and five responses from organisations.
- 10.4 Responses from organisations were received from the NTUC-affiliated unions, Public and Commercial Services Union (PCS) and Prospect. A response was also received from the Defence Police Federation (DPF), which is a non-affiliated staff association and the Civil Service Pensioners Alliance. Responses to the consultation were generally supportive of the policy and scheme regulations.
- 10.5 The remedy population is circa 420,000 members, so the responses represent less than 1% of this population. Of the responses that directly answered the consultation questions 40% agreed these regulations were sufficient to implement the remedy, 25% disagreed but were against the policies introduced by the PSJOA 2022 and 35% felt unable to comment.
- 10.6 Many of the responses sought clarity on future processes and communication and engagement methods to be used and did not challenge the proposed regulations. The minor challenges received were in respect of policies provided by the PSPJOA 2022 (such as around retention of mixed service benefits) so not in the scope of the consultation. More information was provided to members on this in the consultation response.
- 10.7 The analysis and information provided in the consultation response was in some part provided outside of the stated purpose of the consultation. The consultation respondents raised a number of helpful points and the Cabinet Office will use the feedback to inform the implementation of the retrospective remedy.
- 10.8 The Cabinet Office's consultation response was issued on 7 August 2023. The full outcome report can be seen on gov.uk:
<https://www.gov.uk/government/consultations/civil-service-pension-scheme-2015-remedy-mccloud-regulations>

11. Guidance

- 11.1 Member guidance will be an important feature as the remedy is rolled out, this has been made clear through the feedback received in response to the scheme regulations consultation. The 2015 Remedy (McCloud) Programme will be using the Civil Service Pensions website (link below) to provide members with remedy information, this will be updated regularly. In addition members and employers are informed of relevant updates regarding the 2015 Remedy (McCloud) Programme through multi-channel communication campaigns and by working with key partners including member and employer representatives. Further details are here:

<https://www.civilservicepensionscheme.org.uk/your-pension/2015-remedy/>

- 11.2 The Scheme Actuary is to provide guidance to the scheme administrator for certain remedy calculations and to inform a consistent approach across other public service pension schemes.

12. Impact

- 12.1 There is no, or no significant, impact on business, charities or voluntary bodies.

- 12.2 A full Impact Assessment has not been prepared for this instrument because this instrument follows the PSPJOA 2022, for which HM Treasury produced an impact assessment that can be seen using this link:

https://www.legislation.gov.uk/ukpga/2022/7/pdfs/ukpgaod_20220007_en.pdf.

- 12.3 HM Treasury confirmed that the Government's estimate for removing unlawful discrimination across all public service pension schemes for the remedy period will cost on average £2.5 billion in additional future pension payments to all members in scope of the remedy for each year of the remedy period, totalling £17 billion. This estimate reflects the expected additional cost of members receiving benefits from whichever scheme provides the highest value to them for the remedy period.

- 12.4 As a full Impact Assessment was not completed, we have used this Explanatory Memorandum to assess the costs of these Regulations. Across the seven year remedy period, the increased costs of benefits was £2.6 billion for the Civil Service Pension Scheme. The additional cost is captured in the 2016 Scheme Valuation and will be in future valuations (which have a four yearly cycle) as well as being included in the Annual Report and Accounts for the pension scheme. Valuation reports can be found here:

<https://www.civilservicepensionscheme.org.uk/about-us/scheme-valuations/>

- 12.5 The Valuations are used to determine the contributions to be paid by employers; the additional cost as a result of McCloud formed part of the increase from an average of 21.1% to 27.3% of pensionable pay in April 2019 (when the draft Valuation results were released).

- 12.6 It is estimated an additional cost of up to £34 million to cover McCloud-associated legal, administrative and actuarial costs was incurred and was paid as part of the monthly contributions employers make to the scheme. The Civil Service Pensions 2015 Remedy has been classified as a Government Major Programme and interested parties can track the quarterly spend and progress here:

<https://www.gov.uk/government/collections/major-projects-data#2023-data>

- 12.7 This instrument does not impose an additional cost on public sector bodies or the taxpayer, rather implement what has already been costed and accounted for during the McCloud litigation and passage of the PSPJOA 2022.

- 12.8 An equalities impact assessment was carried out in accordance with the Public Sector Equality Duty.

13. Regulating small business

- 13.1 The legislation does not apply to activities that are undertaken by small businesses.

14. Monitoring & review

- 14.1 These Regulations will be periodically monitored by the Cabinet Office as Scheme Manager and amended as necessary.
- 14.2 This instrument does not include a statutory review clause as the provisions do not relate to business activity (including voluntary and community bodies).

15. Contact

- 15.1 Ian Korner, Head of Policy and Legislation for the 2015 Remedy Programme at the Cabinet Office, email: cspconsultation@cabinetoffice.gov.uk or telephone: 07469907095, can be contacted with any queries regarding the instrument.
- 15.2 Kerrie Cureton-Williams, Deputy Director for Civil Service & Royal Mail Pensions, at the Cabinet Office can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Alex Burghart, Parliamentary Secretary at the Cabinet Office, can confirm that this Explanatory Memorandum meets the required standard.