EXPLANATORY MEMORANDUM TO

THE CIVIL SERVICE (OTHER CROWN SERVANTS) PENSION SCHEME (AMENDMENT) REGULATIONS 2022

2022 No. 334

1. Introduction

1.1 This explanatory memorandum has been prepared by the Cabinet Office and is laid before Parliament by Command of Her Majesty.

1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

2.1 To amend the Civil Service (Other Crown Servants) Pension Scheme Regulations 2016 (No. 326) ("the 2016 Regulations") in consequence of provision made by the Public Service Pensions and Judicial Offices Act 2022 (c. 7). The amendments ensure that the existing final salary pension schemes will be closed to the accrual of future service from 1st April 2022. Any current members will, on that date, begin accruing benefits in the scheme established by the 2016 Regulations, with members of the Third Connected Scheme becoming extraordinary members under the 2016 Regulations.

2.2 To amend the 2016 Regulations to widen membership of the scheme established by the 2016 Regulations.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instrument

Breach of the 21-day rule

3.1 The Cabinet Office apologises to the Committee that this instrument, which comes into force on 1st April 2022, is laid in breach of the 21-day rule.

3.2 The instrument could not have been made and laid sooner because it is dependent on the Public Service Pensions and Judicial Offices Act 2022 ("the 2022 Act"), which received Royal Assent on 10 March 2022. Chapter 4 of Part 1 of the 2022 Act contains the operative prospective remedy provision necessary to bring to an end the unlawful age discrimination identified in the McCloud judgment (referenced in paragraph 6 below).

3.3 In particular, section 88(2)(c) of the 2022 Act has the effect of closing the legacy public service pension schemes to future accrual after 31st March 2022. This instrument makes consequential provision for the 2016 Regulations. This provision must come into force immediately after the legacy pension schemes are closed to future accrual by the 2022 Act to ensure legal certainty and fairness. If there is any delay, then there will be a period in which certain members can no longer accrue pension in the legacy scheme but scheme rules would prevent those members from joining the new scheme.

3.4 Scheme members have been on notice, through consultation processes, including the HM Treasury's consultation document of July 2020 and consultation response document of February 2021, through the introduction of the Public Service Pensions and Judicial Offices Bill in the House of Lords on 19th July 2021, and through the scheme-specific consultation referenced in paragraph 10 below, that the commencement date for the prospective remedy would be 1st April 2022. In these circumstances, a breach of the 21-day rule should not give rise to any unfairness.

4. Extent and Territorial Application

4.1 The extent and territorial application of this instrument 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 The Public Service Pensions Act 2013 Act gives the Minister for the Civil Service powers to make and maintain a pension scheme for the Civil Service and certain other (mainly public service) employees.

6.2 The 2016 Regulations established a scheme ("the 2016 Scheme") for civil servants employed by the Secret Intelligence Service and the Security Service ("the Agencies"). The scheme is established by analogy to the Civil Service pension scheme established by the Public Service (Civil Servants and Others) Pensions Regulations 2014 (S.I. 2014/1964) with some amendments and modifications. The 2016 Scheme has been in operation since 1st April 2016.

6.3 The 2022 Act provides powers to remedy discrimination identified by the Court of Appeal in the transitional provisions of many public sector schemes ("the McCloud Remedy"). The same powers are being used to remedy any discrimination in the 2016 Scheme by ensuring that from 1st April 2022 all eligible employees will accrue future pension benefits in the 2016 Scheme.

6.4 These Regulations will also amend regulation 2A of the 2016 Scheme to widen membership of the 2016 Scheme to include those members who transferred to GCHQ and who were members of either the First, Second, Third or Fourth Connected Schemes ("the Connected Schemes") on the date of transfer, such that from 1st April 2022 they will be eligible to be members of the 2016 Scheme.

7. Policy background

What is being done and why?

7.1 Following the Public Service Pensions Act 2013, public sector pension schemes were reformed in 2015 and 2016, with new career average schemes introduced. These reforms also saw the introduction of transitional protection which meant those members within 10 years of the normal pension age could remain in the legacy schemes for a period of time. The Court of Appeal in 2018 determined that transitional protection was discriminatory based on age. This called for a remedy to remove this discrimination and resulted in the publication of the HM Treasury-led Public Service Pensions and Judicial Offices Act 2022.

7.2 To ensure the legislation dictated in the 2022 Act is followed, scheme-level legislation is required to move all active and partially retired members in active service into the reformed scheme (alpha) from 1 April 2022 and the closure of legacy schemes to future service accrual from 31 March 2022. This will mean the discrimination is removed as all members will be in the same position. This is referred to as the 'Prospective Remedy'.

7.3 A transfer of functions took place from the Agencies to Government Communications Headquarters in November 2020. It was agreed that those employees who transferred would continue to have access to the 2016 Scheme. The effect of the McCloud Remedy on members of the Connected Schemes means that members of the Connected Schemes would not be eligible for membership of the 2016 Scheme after 1st April 2022. These Regulations make amendments to the 2016 Regulations to widen the eligibility to participate in the scheme to give effect to the decision that all transferring members would be eligible to be members of the 2016 Scheme. The transferring employees will only remain eligible to be members of the scheme established by the 2016 Regulations for as long as they remain employed in the transferred function.

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 This instrument makes limited amendments to the 2016 Regulations and it is not considered appropriate to consolidate the 2016 Regulations at this time.

10. Consultation outcome

10.1 Section 21 of the Public Service Pensions Act 2013 requires the Minister responsible for making the regulations to consult those the Minister considers likely to be affected by them, or the representatives of those persons. Consultation was carried out in two stages, the first was concluded on 16 January 2022 and the second in respect of widening the membership of the 2016 Scheme was concluded on 11 February 2022. The relevant representatives and members indicated that they had no objections to the proposed amendments being introduced by these Regulations.

11. Guidance

11.1 No guidance has been produced to accompany this instrument, the contents of which are self-explanatory.

12. Impact

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

12.2 There is no, or no significant, impact on the public sector.

12.3 An Impact Assessment has not been prepared for this instrument.

13. Regulating small business

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

14. Monitoring & review

14.1 The Civil Service (Other Crown Servants) Pension Scheme Regulations 2016 are kept under review by the pension scheme manager.

15. Contact

15.1 Ian Korner, Head of Policy and Legislation (2015 Remedy Programme), Civil Service & Royal Mail Pensions (email: ian.korner@cabinetoffice.gov.uk), can answer any queries regarding the instrument.

15.2 Kerrie Cureton-Williams, Deputy Director, Civil Service & Royal Mail Pensions, can confirm that this Explanatory Memorandum meets the required standard.

15.3 Heather Wheeler, Cabinet Office Parliamentary Secretary, can confirm that the Explanatory Memorandum meets the required standard.