EXPLANATORY MEMORANDUM TO

THE PUBLIC SERVICE (CIVIL SERVANTS AND OTHERS) PENSIONS (AMENDMENT) (NO. 2) REGULATIONS (NORTHERN IRELAND) 2022

2022 No. 126

1. Introduction

1.1. This Explanatory Memorandum has been prepared by the Department of Finance to accompany the Statutory Rule (details above) which is laid before the Northern Ireland Assembly.

1.2. The Statutory Rule is made under sections 1(1) and (2)(a), 2, 3(1), (2) and (3) of and Schedule 3 to the Public Service Pensions Act (Northern Ireland) 2014 and is subject to the negative resolution procedure.

2. Purpose

2.1. To amend the Public Service (Civil Servants and Others) Pensions Regulations (Northern Ireland) 2014 ("the 2014 Regulations") made under the Public Service Pensions Act (Northern Ireland) 2014 ("the 2014 Act"). The 2014 Act gives powers to make and maintain a pension scheme for the Civil Service and certain other (mainly public service) employers. The 2014 Regulations established such a scheme, known as the alpha scheme, which has been in operation since 1st April 2015.

2.2. These Regulations make the amendments required to move all active members to the reformed scheme (alpha) from 1 April 2022, and closes the PCSPS(NI) to future accrual from 31 March 2022. They also make some corrections and clarifications to the current Public Service (Civil Servants and Others) Pensions Regulations (Northern Ireland) 2014. These Regulations come into operation on 1st April 2022 but regulations 6(5) to 6(8) come into operation immediately before 1st April 2022 and have effect from 18th December 2014.

3. Matters of special interest to the Examiner of Statutory Rules

3.1. The Department of Finance apologises to the Examiner that this rule, which comes into force on 1 April 2022, is laid in breach of the 21-day rule.

3.2. The rule 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 4 below).

3.3. In particular, section 88(5)(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 Northern Ireland Civil Service Pension Schemes. 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 Department of Finance consultation document of August 2020 and consultation response document of February 2021, through the introduction of the Bill in the House of Lords on 19th July 2021, and through the scheme-specific consultation referenced in paragraph 5 below, that the commencement date for the prospective remedy would be 1 April 2022. In these circumstances, a breach of the 21-day rule should not give rise to any unfairness.

4. Background

What is being done and why

4.1. In April 2015, the Coalition Government and devolved administrations introduced reformed (defined benefit) public service pension schemes. The changes followed a fundamental structural review of public service pensions by the Independent Public Service Pension Commission, chaired by Lord Hutton of Furness. As part of these changes, protection was afforded to certain members of the existing public service schemes which allowed them to remain in their existing pension schemes and not transfer to the new reformed schemes (referred to as 'transitional protection'). Members eligible for this protection were either (a) within ten years of their normal pension age as at 31 March 2012 (known as 'full protection members') or (b) within ten years and thirteen years and six months of their normal pension age and could elect to remain in their existing scheme for a particular period of time after that scheme closed as a result of the reforms (known as 'tapered protection members').

4.2. In December 2018, the Court of Appeal for England and Wales found that transitional protection unlawfully discriminated against younger members of the judicial and firefighters' pension schemes in particular, as transitional protection was only offered to older scheme members. It also indirectly discriminated against women and ethnic minorities. The Courts required that this unlawful discrimination be remedied by the Government. Rulings of the Court of Appeal in

England and Wales are not directly binding here. However, the devolved public service schemes here incorporate the same transitional protection arrangements as the schemes in Great Britain and the implications of the Court of Appeal decision are such that all schemes must be treated as affected and so require to be remedied. The Court of Appeal Judgment is commonly referred to as the McCloud Judgement.

4.3. In July 2021 the Public Service Pensions and Judicial Offices (PSPJO) Bill was introduced into Parliament and confers powers to remedy the discrimination identified by the Court of Appeal. A motion to extend the provisions of the Bill to public service schemes here was debated in the Assembly on 1 November 2021 and a Legislative Consent Motion (LCM) was passed. The PSPJO Bill received Royal Assent on 10 March 2022.

4.4. The Public Service Pensions and Judicial Offices Act 2022 ("the 2022 Act") calls for all civil servants who continue in service from 1 April 2022 onwards to do so as members of alpha. The legacy PCSPS(NI) will be closed in relation to service after 31 March 2022, closing the remedy period, during which members in scope have a choice of benefits. This is known as the prospective remedy.

4.5. These Amendment Regulations make provisions for implementing the 'prospective remedy' phase of the removal of the discrimination identified by the Court of Appeal which requires moving all active members of the PCSPS(NI) (including partial retirees in active service) to alpha on 1 April 2022 and making consequential changes to the regulations, pursuant to the requirements of the 2022 Act. This ensures that from 1 April 2022 onwards, **all** active pension scheme members will be members of the alpha (defined benefit) civil service pension scheme and will be accruing benefits in the same scheme.

Lump sum death benefit

4.6. Regulation 3 clarifies that payment of a lump sum death benefit is discretionary. This will bring the 2014 Regulations into line with existing practice, the PCSPS(NI) and other public service pension schemes and will achieve the intended effect in relation to inheritance tax. This amendment is not considered to have an adverse effect on members.

Timing of provision of information about the payment of an annual allowance charge

4.7. Regulation 4 amends regulation 173 of the 2014 Regulations to bring provisions about the time when information about the payment of the annual allowance charge into line with the provisions of regulation 14A of the Registered Pension Schemes (Provision of Information) Regulations 2006 (S.I. 2006/567).

Removal of purchase of Added Pension restriction

4.8. Regulation 5 removes the initial 12-month bar on making lump sum payments towards added pension for members transferring into alpha from the PCSPS(NI) to allow certain transition members to exercise an option to make a lump sum payment for added pension. This is necessary as the remedy will create an oddity where no members being moved to alpha will be able to buy added pension by lump sum as they do not have 12 months of alpha service. Furthermore, all remedy members already in alpha will be rolled back to the PCSPS(NI) in respect of any pensionable service rendered between 1 April 2015 and 31 March 2022. This will be implemented retrospectively in 2023, meaning that their first year of service in alpha would be 2022-23, invalidating any added pension purchased in this year. It is therefore necessary to remove this restriction.

Closure of PCSPS(NI) and Transitional Provisions

4.9. Regulation 6 paragraphs (2), (3), (4) and (9) amend Schedule 2 (transitional provisions) in consequence of provision made by the Public Service Pensions and Judicial Offices Act 2022 by not allowing any future accrual in PCSPS(NI) from 1 April 2022 for all classes of member in respect of service pensionable under civil service pension terms. This means that from 1 April 2022, all members of the civil service pension arrangements will only be able to accrue benefits in alpha and concurrently the PCSPS(NI) will close to accrual.

4.10. Amendment to paragraphs 16, 17, 25 and 26 of Schedule 2 makes clear that in circumstances where transitional protection applied to people who returned to the civil Service pension arrangements by virtue of employment with an organisation admitted under the Government's New Fair Deal policy, protection also applied to people who returned by virtue of employment in the civil service. This brings certain Fair Deal members within the scope of transitional protection and has retrospective effect from 18 December 2014, the date Schedule 2 (transitional provisions) came into operation. Section 3(3)(b) of the Public Service Pensions Act (Northern Ireland) 2014 ("the 2014 Act") provides authority for the Regulations to take effect as from a date earlier than the making of these Regulations.

Ill-Health Underpin

4.11. Ill-Health Retirement (IHR) is a conditional benefit where the right arises at the point where the member meets the criteria for entitlement as set out in scheme regulations. If the rules applicable to the member are changed before the trigger event, then the new rules will apply; the qualifying criteria for IHR in legacy and reformed schemes may differ meaning that a member meets the criteria in one but not the other, or meets the criteria for higher tier benefits in one but not the other. Regulation 6(10) inserts a new paragraph 29B to Schedule 2 which ensures that members of the PCSPS(NI) who make an application for ill-health pension on or before 31st March 2022 which is not determined on or before that date receive no less

generous ill-health benefits than they would have received had the application been determined on that date.

5. Consultation

5.1. A public consultation on these Amendment Regulations ran from 20 December 2021 to 25 February 2022. A total of 24 responses to the consultation were received which comprised 19 responses from individuals and 5 responses from representative organisations. After careful consideration of the responses received, the Department of Finance will continue with the changes contained in the Statutory Rule.

6. Equality Impact

6.1. An Equality Screening Exercise was conducted on 15 December 2021 and it is the view of Civil Service Pensions that the proposed amendments will not have an adverse differential impact on any of the Section 75 groups.

7. Regulatory Impact

7.1. These Regulations impose no costs on business, charities, social economy enterprises or the voluntary sector. A Regulatory Impact Assessment is not considered necessary.

8. Regulating small business

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

9. Financial Implications

9.1. There are no financial implications for the Department.

10. Section 24 of the Northern Ireland Act 1998

10.1. The Departmental Solicitor's Office has advised that the Regulations are within the scope of Section 24 of the Northern Ireland Act 1998 and are therefore within competence.

11. EU Implications

11.1. Not applicable.

12. Parity or Replicatory Measure

12.1. It is normal practice to introduce the same pension and compensation provision for civil servants in Northern Ireland as exists for the Home Civil Service in Great Britain. Therefore the Amendment Regulations

replicate the relevant equivalent legislation for the civil service pension scheme in Great Britain, namely “The Public Service (Civil Servants and Others) Pensions (Amendment) Regulations 2022”.

13. Additional Information

13.1. Peter Philip, Head of Civil Service Pensions Policy, Legislation & Communications Branch (telephone 02871 310706 or email peter.philip@finance-ni.gov.uk) can be contacted with any queries regarding the Regulations.