EXPLANATORY MEMORANDUM TO

THE PUBLIC SERVICE (CIVIL SERVANTS AND OTHERS) PENSIONS (AMENDMENT) REGULATIONS 2020

2020 No. 224

1. Introduction

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

2. Purpose of the instrument

2.1 These Regulations amend the Public Service (Civil Servants and Others) Pensions Regulations 2014 (the "2014 Regulations") made under the Public Service Pensions Act 2013 (the "Act") to make provision for the contributions payable by members of that scheme for the period of 1st April 2020 to 31st March 2021.

3. Matters of special interest to Parliament

Matters of special interest to the [Joint Committee on Statutory Instruments

3.1 None.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

3.2 As the instrument is subject to negative resolution procedure, there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

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 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 2014 Regulations established such a scheme, known as the *Alpha* scheme, which has been in operation since 1st April 2015. Regulation 134 of the 2014 Regulations makes provision for the contributions payable by scheme members.

7. Policy background

What is being done and why?

7.1 The 2014 Regulations established a new Civil Service pension scheme from 1st April 2015. Regulation 134 of the 2014 Regulations makes provision for the member contributions rate payable by a scheme member up to 31st March 2020. The member contributions rates and associated annualised rate of pensionable earnings bands ("pensionable earnings bands") set out in Regulation 134 are designed to yield an average of 5.6% of members' pensionable earnings. Regulation 134 is silent on member contributions rates from 1st April 2020, and provision needs to be made for this.

7.2 The purpose of this instrument is to extend (and not alter) the current member contributions rates and to slightly increase 2019/20 pensionable earnings bands from 1st April 2020 to enable the scheme to continue to collect member contributions.

7.3 The instrument also has the effect that back-dated pay should be removed from the calculation of a member's pensionable earnings band, effective from 1st September 2020.

7.4 The Chief Secretary to the Treasury (the "Chief Secretary") announced on 30th January 2019 that the Government was pausing one element of the valuations of public service pensions; the mechanism for assessing the value of public service pensions (the "cost control mechanism"). The Chief Secretary's statement advised that the judgment of the Court of Appeal in *Lord Chancellor and Secretary of State for Justice and another v McCloud and others* and *Secretary of State for the Home Department and others v Sargeant and others* [2018] EWCA Civ 2844 on part of the 2015 pension reforms meant that it was not possible to assess the value of current public service pension arrangements with any certainty, and the cost control mechanism was being paused until there is certainty about the value of public service pensions to employees from April 2015 onwards. If the pause to the cost control mechanism is lifted, consideration will be given to whether the member contributions rates and associated pensionable earnings bands in the Civil Service pension scheme should be amended.

7.5 Section 22 of the Act provides for an enhanced consultation and report process in the event of proposed changes to 'protected elements' (such as members' contribution rates and benefit accrual rates) within 25 years of 2015. The presumption is that it is not desirable to make changes to the protected elements within the protected period (which ends on 31st March 2040) unless there is a specific reason for doing so; for example, as a result of the cost control mechanism.

7.6 This amendment to the 2014 Regulations relates to a protected element but has the effect of keeping the current member contributions rates and slightly increasing associated pensionable earnings bands, and ensures that member contributions can continue to be lawfully collected from 1st April 2020, thus safeguarding the effective operation of the Civil Service pension scheme.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

8.1 This instrument does not relate to withdrawal from the European Union.

9. Consolidation

9.1 The Department has no plans to consolidate the legislation at this time.

10. Consultation outcome

10.1 Employee representatives were consulted about these regulations. A response on 28th January 2020 from the non-National Trades Union Council (NTUC) affiliated union, the Defence Police Federation (DPF), had no objection to member contributions rates being carried over into scheme year 2020/21 and welcomed the proposed amendments to increase pensionable earnings bands and remove back-dated pay from the pensionable earnings band calculation. The DPF was disappointed to note the continued suspension of the cost control mechanism. The National Crime Officers Association (NCOA), also non-NTUC affiliated, responded on 29th January 2020 acknowledging the proposed changes as a sensible solution for the scheme year 2020/21.

10.2 A joint response was received on 23rd January 2020 from seven NTUC affiliated trade unions (The Association of First Division Civil Servants (FDA), General, Municipal, Boilermakers (GMB), Northern Ireland Public Service Alliance (NIPSA), Public and Commercial Services Union (PCS), Prison Officers Association (POA), Prospect, and Unite) objecting to the proposal. On 6th February 2020, Cabinet Office officials met the NTUC Convenor, PCS, Prospect, and FDA to further understand their objections and counter proposals. A further joint response was sent to Jeremy Quin, former Minister for Implementation, on 13th February 2020, confirming the unions' position, which is (amongst others) as follows:

- that they welcome the changes to back-dated pay;
- that they are strongly opposed to a further 'rollover' of the current member contributions rates;
- that they wish member contributions rates be reduced by 2%;
- that they wish the current pause of the cost control mechanism be lifted; and
- that they wish the Scheme Advisory Board's (SAB) recommendation that a nil member contributions rate be applied until the 2% reduction to member contributions rates can be implemented be considered.

10.3 Prospect, a NTUC affiliated union, wrote separately to confirm its objections to the continued pause of the cost cap mechanism and extension of 2019/20 member contributions rates.

10.4 Following consultation with employers, it became clear that it would not be possible to implement the change to the treatment of back-dated pay by 1st April 2020, due to the complexity of the systems changes required. Cabinet Office proposed an effective date of 1st September 2020, which was accepted by employers and payroll departments.

10.5 The Cabinet Office carefully considered the responses from employers and amended the Regulations to reflect a 1st September 2020 implementation date for the change in treatment of back-dated pay.

10.6 The Cabinet Office carefully considered the responses from employee representatives and responded that it was unable to accept the NTUC affiliated unions' counter proposals regarding a reduction or suspension in member contributions rates.

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 impact on business, charities or voluntary bodies.

12.2 There is no impact on the public sector of maintaining the current level of member contributions. The impact of not making this Regulation would be to reduce the effective operation of the scheme and the income received by the scheme by around £800 million per annum.

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 Public Service (Civil Servants and Others) Pensions Regulations 2014 are kept under regular review by the Cabinet Office in its capacity as the pension scheme manager.

15. Contact

15.1 Emily Clifton at the Cabinet Office (Telephone: 07548139957 or email: emily.clifton@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 Lord Agnew, Minister of State at the Cabinet Office and Her Majesty's Treasury, can confirm that the Explanatory Memorandum meets the required standard.