EXPLANATORY MEMORANDUM TO

THE PUBLIC SERVICE (CIVIL SERVANTS AND OTHERS) PENSIONS (AMENDMENT) REGULATIONS 2022

2022 No. 330

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 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 move all Principal Civil Service Pension Scheme (PCSPS) active members - including partially retired members - in active service, into the reformed scheme (alpha) from 1 April 2022. Further, these Regulations provide for the member contribution rates for the scheme year ending on 31 March 2022 to also apply to the 1 April 2022 to 31 March 2023 scheme year, with no changes to the annualised rate of pensionable earnings bands. They also make some miscellaneous technical amendments that are not related to either of the above categories.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

Breach of the 21-day rule

3.1 The Cabinet Office apologises to the Committee that this instrument, which comes into force on 1 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 ("PSPJO Act 2022"), which received Royal Assent on 10 March 2022. Chapter 4 of Part 1 of the PSPJO Act 2022 contains the operative prospective remedy provision necessary to bring to an end the unlawful age discrimination identified in the McCloud judgment (referenced in paragraph 7 below).

3.3 In particular, section 88(2)(c) of the PSPJO Act 2022 has the effect of closing the legacy public service pension schemes (being the PCSPS for the Civil Service) to future service accrual after 31 March 2022. This instrument makes consequential provision for the 2014 Regulations. This provision must come into force immediately after the legacy pension schemes are closed to future accrual by the PSPJO Act 2022 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 reformed scheme (being alpha for the Civil Service).

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 19 July 2021, and through the scheme-specific consultation referenced in paragraph 10 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.

3.5 In addition, the inclusion of the member contributions collection for 2022/23 was proposed in this SI in order to consolidate the amendments effective from 1 April 2022. If this is not in place for 1 April 2022, then there will be a period where there is no legal basis for the collection of member contributions in the reformed scheme, alpha.

Provisions with retrospective effect

3.6 Amendments 7(5) to (8) of these Regulations have effect from 15 August 2014 being the date the relevant provisions in the 2014 Regulations came into effect.

3.7 These retrospective provisions do not appear to the Minister to have significant adverse effects in relation to the pension payable to or in respect of members of the scheme established by the 2014 Regulations, nor in any other way in relation to members of that scheme. This is because the purpose of the amendment it to make 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, transitional protection also applied to people who returned by virtue of employment in the civil service.

3.8 Accordingly, the procedures set out in section 23 of the Act are not applicable in respect of these Regulations.

3.9 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 territorial extent of this instrument is the United Kingdom.

4.2 The 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 1 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 Following the Public Service Pensions Act 2013, public service pension schemes were reformed in 2015, with new career average schemes introduced ("the reformed schemes"). 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 *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 ("McCloud") determined that transitional protection was age discriminatory. The HM Treasury-led Public Service Pensions and Judicial Offices Act 2022 was published to remedy the discrimination identified ("the remedy").

7.2 As part of the remedy, the PSPJO Act 2022 effects the closure of the PCSPS to future service accrual from 31 March 2022, meaning all active and partially retired members in active service move into the reformed schemes from 1 April 2022. Scheme-level legislation is therefore required to update existing scheme regulations as a result. This will mean from 1 April 2022 treatment will be equalised in respect of all members (the "prospective remedy").

7.3 In the absence of the implementation of the prospective remedy, the scheme will continue to incur significant additional cost as some members would continue to accrue benefits in the PCSPS. Across the public sector this is estimated at £2.5 billion a year.

7.4 Regulation 134 of the 2014 Regulations makes provision for the alpha member contributions rate payable by scheme members' up to 31 March 2022. The member contribution 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 contribution rates from 1 April 2022, and provision needs to be made for this.

7.5 The purpose of this instrument is to extend (and not change) the current member contribution rates from 1April 2022 to enable the scheme to continue to collect member contributions. There is no change to the associated "pensionable earnings bands".

7.6 Member contributions make up £934 million of scheme income (used to pay benefits). Parliament would need to vote additional monies if these were not collected.

7.7 The Chief Secretary to the Treasury (the "Chief Secretary") announced on 30 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 as a result of the McCloud judgement 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. The cost control mechanism assesses scheme costs against a base level the employer cost cap, and if costs move above or below specified margins, then a breach occurs and member benefits of contribution rates must be adjusted to bring costs back to target.

7.8 In July 2020 HM Treasury announced the unpausing of the cost cap process with actuarial results expected late in 2021. Given the timing of this, consideration was given as to whether it was feasible to await the results of the 2016 valuation to inform any changes to member contribution rates.

7.9 The results of the 2016 valuation, released on 17 December 2021, determined that the cost cap of the scheme is -0.4% below the employer cost cap. As the result lies within the ± 2% corridor specified in HMT regulations, this means that no changes to benefits or member contributions are required as there is no breach of the cost control mechanism.

7.10 There are also additional minor technical clarifications which correct dates and references and do the following (7.11-7.14):

7.11 Amendment to regulation 121 to make clear that payment of the lump sum death benefit is discretionary to take the lump sum death benefit payment out of the inheritance tax charge. This will bring alpha provisions into line with existing public service pension policy and practice, the PCSPS and other public service pension schemes, and wil1achieve the intended effect in relation to inheritance tax. This amendment is not considered to have an adverse effect on members. The provision would be effective from 1 April 2015.

7.12 Amendment to regulation 173 to correct the date by which the scheme manager must provide members with information about payment of the annual allowance charge. This brings the date into line with the requirements of regulation 14A(4) of the Registered Pension Schemes (Provision of Information) Regulations 2006.

7.13 Amendment to paragraph 7 of Schedule 1 to remove the initial 12-month bar on making lump sum payments towards added pension for members transferring into alpha from the legacy scheme.

7.14 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.

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 Department has no plans to consolidate the legislation at this point.

10. Consultation outcome

10.1 Scheme members and employee representatives were consulted about these regulations through an open consultation. The consultation ran from 22 November 2021 to 17 January 2022. Responses were received from The Association of First Division Civil Servants (FDA), Public and Commercial Services Union (PCS) and Prospect, NTUC-affiliated unions and Defence Police Federation (DPF). All responses opposed the continued rolling forward of scheme contribution rates and the inclusion of the 2015 remedy costs in the 2016 cost cap valuation process but agreed that a process is required for PCSPS ill health retirement applicants who have been unable to complete the process before 1 April 2022.

10.2 Over 1,200 members responded using a uniform response that supported the introduction of transitional arrangements for ill health retirements that are ongoing and not completed by 1 April 2022 but opposed the contributions rollover.

10.3 When the consultation was issued in November 2021 the 2016 cost control mechanism calculations valuation had not been finalised, so the consultation proposed rollover of existing contributions to reflect that. The calculations have now been completed and it has been determined that there is no breach, therefore there is no mechanism for member contribution rates to be either raised or reduced.

10.4 The 2020 valuation, due at a later date, will be the next time there is the possibility of adjusting employee contribution rates. In addition, the amendment is needed to maintain member contributions which will allow the scheme to continue to operate effectively.

10.5 The union representation did not persuade Cabinet Office that any changes should be made to the proposals that were subject to consultation.

10.6 A link to the consultation and consultation response can be found here: https://www.gov.uk/government/consultations/civil-service-pension-scheme-2015-remedy-and-civil-service-member-contributions

11. Guidance

11.1 Guidance has been produced to accompany this instrument. There is a dedicated 2015 Remedy section on the Civil Service Pensions website. A regular Remedy newsletter is issued to explain major milestones such as the closure of the PCSPS. Letters have been issued to all protected members (around 44,000) to inform them of the move to alpha with effect form 1 April 2022.

11.2 Information about member contributions for the 2022/2023 scheme year has been notified to civil service employers by an Employer Pension Notice EPN 653.

12. Impact

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

12.2 The impact of not making the changes to close the legacy schemes on 31 March 2022 and move all scheme members to alpha, from 1 April 2022 would mean that the discrimination on the grounds of age would not be removed in line with the PSPJO Act 2022.

12.3 There is no, or no significant 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 £934 million per annum.

12.4 An Impact Assessment has not been prepared for this instrument as a result.

12.5 An Equality Impact Assessment (EQIA) has been carried out to assess the impact of the secondary legislation implementing the prospective remedy against each of the protected characteristics as outlined in the Public Sector Equality Duty (PSED).

12.6 The secondary legislation proposed follows the PSPJO Act 2022 introduced by HM Treasury, which, will require public service (defined benefit) schemes to implement the prospective remedy. HM Treasury conducted an EQIA to assess the impact of the PSPJO Act 2022.

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 approach to monitoring of this legislation is to keep The Public Service (Civil Servants and Others) Pensions Regulations 2014 under regular review by the Cabinet Office in its capacity as 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.