EXPLANATORY MEMORANDUM TO

THE PUBLIC SERVICE (CIVIL SERVANTS AND OTHERS) PENSIONS (AMENDMENT) REGULATIONS 2023

2023 No. 180

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 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 lawful provision for the contributions payable by members of that scheme as of the 1st April 2023.

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 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 2023. 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 2023, 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 increase the lowest salary threshold and widen the 4.6% contribution band for the financial year 2023/24. The lowest salary threshold will then increase annually in line with the Consumer Prices Index (CPI) from 2024/25 to 2026/27. All salary thresholds apart from the highest threshold will be increased in line with the CPI with effect from 2027/28.

7.3 Historically the member contributions table has been implemented for a four year period aligned with the scheme valuation. However between 2019 and 2022 it became necessary to implement tables annually because of the 2018 McCloud judgment which identified scheme rules as having age discriminatory effect. As a result, primary legislation has been introduced to remove the discrimination and along with secondary legislation will provide a remedy. This has resulted in much uncertainty for the scheme and in order to mitigate the impact of future disruption or delay of valuations the new table will not be time-bound however the level of member contributions will continue to be considered as part of each four yearly valuation cycle and amendments will be made to regulation 134 if required.

7.4 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, due to the delay in receiving the outcome of the cost control mechanism - and the processes under section 22 are followed. In accordance with section 22, a report has been laid before Parliament alongside these Regulations and details of the enhanced consultation are provided in paragraph 10 below.

7.5 This amendment to the 2014 Regulations relates to a protected element but has the effect of keeping the current member contributions rates and widening an associated pensionable earnings band reducing the contribution rate payable for members earning between £23,101 and £32,000. It will also ensure that member contributions can continue to be lawfully collected from 1st April 2023 thereby safeguarding the effective operation of the Civil Service pension scheme.

8. European Union Withdrawal and Future Relationship

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 The Cabinet Office consulted representatives of employees likely to be affected by these proposed regulations ("employee representatives") between 1st August 2022 and 23rd October 2022. The Cabinet Office considered that consulting 11 unions and organisations representing the majority of employees was an appropriate approach to obtaining the views of those likely to be affected, rather than consulting employees individually.

10.2 A response from the National Trade Union Committee (NTUC) affiliated union, the Public and Commercial Services (PCS) was received on 23rd October 2022. The PCS

accepted the table for 2023/24 but requested that the table should be implemented for a one year period only as they believed it was prejudicial to the Judicial Review in the High Court, which is listed for hearing from 30th January to 3rd February 2023. The Judicial Review will consider the Government's decision to include the cost of remedying the McCloud judgment in the 2016 valuation assessment.

10.2.1 In a letter dated 31st October, responding to the PCS, the Cabinet Office stated that without wishing to comment on ongoing litigation, it must be emphasised that regular scheme maintenance activities such as the assessment of member contribution levels must continue and cannot be suspended pending the outcome of the litigation. The Cabinet Office also offered assurances that once the outcome of the litigation is known, they will take the appropriate actions in compliance with the court judgment and any relevant consultation requirements.

10.3 A response from the NTUC affiliated union, the FDA was received on 23rd October 2022. They asked that a pay related index be utilised instead of CPI, and that all thresholds be indexed, to minimise any cliff-edge scenarios where members pay moves them into a higher contribution rate band. The FDA also asked that the table be limited to a four-year duration due to the uncertain environment and to ensure that regular consultation on contribution levels are undertaken.

10.3.1 In a letter dated 31st October, responding to the FDA, the Cabinet Office stated that in order to keep with the long-standing approach for contribution rates to be mildly progressive net of tax relief, the indexation of the £32,001 threshold by CPI will generally mean that only those receiving more significant pay rises or promotional increases will see an increase in their contribution rate. Furthermore, the Cabinet Office detailed that they are committed to reviewing the contributions table in the event of a breach of the 2020 cost control mechanism and as part of each four yearly valuation cycle, from the 2024 valuation. Further reviews may also be considered to address a substantive change to income tax thresholds or pension tax regime should the table no longer meet the agreed principles for the contribution structure.

10.4 A response from the non-affiliated organisation, the Defence Police Federation (DPF) was received on 12th September 2022. The DPF expressed disappointment that only the lowest salary threshold had increased and the higher thresholds had not been increased, as they believed this might lead to some members who are close to these thresholds moving into the higher contribution band due to an annual pay increase which could result in the pay rise being negated or result in the individual being worse off.

10.4.1 In a letter dated 31st October, responding to the DPF, the Cabinet Office stated that the raising of the lower salary threshold from £23,100, the level in place for the 2022/23 financial year, to £32,000 would reduce the contribution rate for an estimated 150,000 Civil Servants, whilst still making sure that the proposed table meets all agreed principle and yield its 5.6% target over the initial four-year period. Furthermore, if the £56,001 and £150,001 salary thresholds were increased ahead of planned changes to income tax thresholds, it would create additional pockets of advantage and larger cliff edges, going against the agreed principles for the contribution structure.

10.5 In summary, the Cabinet Office carefully considered the responses from the employee representatives and provided additional information to the three organisations via letters dated 31st October 2022 which addressed their individual concerns and

explained why the policy proposed is necessary. An additional period of fourteen days was offered for the organisations to provide further comments and proposals however the 14th November passed with no further correspondence being received.

10.6 In a letter dated 2nd December, the Cabinet Office advised the employee representatives that it was unable to accept the counter-proposals.

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 approximately £1.02bn per annum (based on 2021/22 figures).

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 Cilla Christmas at the Cabinet Office (Telephone: 07568 426391 or email: cilla.christmas@cabinetoffice.gov.uk) can be contacted with 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 Alex Burghart, Parliamentary Secretary for the Cabinet Office, can confirm that the Explanatory Memorandum meets the required standard.